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OFFICIAL REPORT
(HANSARD)

Tuesday, November 27, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Tuesday, November 27, 2001

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Anne C. Cools: Honourable senators, pursuant to rule 43(7) of the *Rules of the Senate*, I hereby give oral notice that I will rise later this day to address a question of privilege. My question of privilege shall be in respect of statements made by a senator during Senators' Statements on Thursday, November 22, 2001, which statements were widely reported in the national newspapers on November 23, 2001, including the *Ottawa Citizen*, *The Edmonton Journal*, and *The Vancouver Sun*, which statements purport to link senators participating in a Senate debate sponsored by myself on Bill S-9, to reserve certain doubts regarding the meaning of marriage, to the terrible murder of a homosexual man in Vancouver's Stanley Park, which connection is not only tasteless but also disrespectful of senators and the Senate.

Honourable senators, I will be asking the Speaker of the Senate to rule that a prima facie question of privilege has been established. If he so finds, I am prepared to move the necessary motion.

Also, honourable senators, earlier today, pursuant to rule 43(5), I gave the requisite written notice to the Clerk of the Senate.

CHAIRMAN OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

ALLEGATIONS OF CONFLICT OF INTEREST IN STUDY ON STATE OF HEALTH CARE SYSTEM

Hon. Michael Kirby: Honourable senators, some of you may recall that in March 2000 and again in March 2001, during debate on the order of reference for the health care study, which is now being done by the Standing Senate Committee on Social Affairs, Science and Technology, I stated publicly in this chamber that I was a director of a private sector nursing home company. On both occasions, I also filed a letter with the clerk of the committee declaring this interest, even though under the Senate rules I was not required to do so. I took these steps because I was concerned that the committee's work on health care policy might be controversial and that some people might

decide to discredit the work of the committee by attacking me personally for sitting on the board of directors of a nursing home company while simultaneously chairing a health care study. I was concerned that such people would claim that I had a conflict of interest. After all, it is always easier in politics to shoot the messenger than to engage in a meaningful debate on difficult and controversial policy questions.

Unfortunately, in spite of the preventive measures I took, some people who are upset with the committee — including with its recently released options paper that contains some options with which they strongly disagree — chose to attack me personally rather than debate the options.

Honourable senators, I believe that the work of the Social Affairs Committee on the health care issue is so important that its reports must be above reproach. The committee is rapidly becoming regarded as one of the best forums in Canada for discussion and debate of health care issues, a role that the committee hopes to continue for some years to come. Nothing should be allowed to tarnish the integrity of the committee's work.

Therefore, two weeks ago, I wrote to Howard Wilson, the Ethics Counsellor, asking him for an opinion on whether I had a conflict of interest. After sending that letter, I told Senator Carstairs that if Mr. Wilson ruled that I had a conflict, I would immediately resign from the committee.

I received Mr. Wilson's opinion last week. Its final paragraph reads as follows:

No doubt the Committee's work, when finished, will have an important impact on the public debate about the Canadian health care system. But the report will not be binding on the federal government and, therefore, I do not find that you are in a conflict of interest.

Therefore, honourable senators, I intend to remain chair of the Social Affairs Committee as long as the committee members want me to do so.

Some Hon. Senators: Hear, hear!

Senator Kirby: Also, as soon as my letter to Mr. Wilson and his letter to me are translated, I will seek leave of the Senate to table the letters. I will do so because Mr. Wilson's four-page letter does an outstanding job of describing what does and does not constitute a conflict of interest for a senator. Indeed, it is the best such description I have ever read. I urge my colleagues to read the letter if they are ever in doubt about whether they are in a position of conflict of interest.

In the meantime, while I am waiting for the letters to be translated, if any of my colleagues want a copy of Mr. Wilson's letter, they should simply contact my office.

•(1410)

INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Hon. Ethel Cochrane: Honourable senators, I rise today to speak in recognition of the International Day for the Elimination of Violence Against Women, which was marked on Sunday, November 25. Violence against women takes many forms in our society — from sexual harassment, to date abuse, stalking, rape and even murder.

Surely, we can agree that we have made major strides in advancing women's causes. However, despite our relative accomplishments, the reality is that in Canada two women are killed each week as a result of domestic violence. That is a terrible statistic. The statistics vary across the country, with the highest rate of violence against women being recorded in British Columbia at almost 60 per cent.

Honourable senators, we continue to see violence against women in movies, on television and in all forms of media. Our newspapers detail stories from across the country about such horrible crimes, sometimes even reporting our ambivalence, our hesitance to become involved as these crimes go on around us. This was certainly made clear to us this year in Montreal. A teenage girl, who obviously had been a victim of violence, lay unconscious near a subway stop for hours before an office worker finally went against the boss's orders and called the police.

Statistics reveal that, on the average, female victims of violence suffer 35 incidents before they go to the police. Often they feel trapped in violence because they fear for their lives, the lives of their children and other family members; they have nowhere to go; they worry about economic security for their children; or simply, they fear no one will believe their stories.

Not surprisingly, honourable senators, domestic violence has a tremendous effect on Canadian society. Earlier this year, a study conducted by the University of Western Ontario found that high school students living in homes with a history of violence had significant adjustment and emotional problems. For females living in these environments, the risk of depression and anger was seven times greater than for other girls, and the risk of anxiety problems and post-traumatic stress disorder was nine times greater. The study also found that boys who witnessed violence at home were three times more likely to use physical abuse against their partners.

One common argument in the discussions on violence against women is that men are victims of spousal violence, too. Indeed, on the surface, it appears that the General Social Survey even

supports the argument. However, a closer look reveals that women not only experience more severe forms of abuse, but the impact of the abuse is far greater on them.

The Hon. the Speaker: I regret to advise the Honourable Senator Cochrane that her three minutes have expired.

[Translation]

OFFICIAL LANGUAGES

Hon. Jean-Robert Gauthier: Honourable senators, the French-language media have given a lot of coverage to the latest report prepared on behalf of the Commissioner of Official Languages, "The Governance of Canada's Official Language Minorities: A Preliminary Study." This study is very critical of government funding of official language minorities.

Linda Cardinal and Marie-Ève Hudon, who are researchers at the University of Ottawa, mention the following:

...the data show that the government's new procedures were primarily a way of having the decrease in public funding managed by others...

The Commissioner of Official Languages pointed out that there had been a 50 per cent cut in staff involved in official languages in the federal government. Despite certain newspaper reports to the contrary, cuts were not made to funding. Financial support is at the same level it was eight years ago. Not much has changed, except, to quote the report again:

...the communities are being left to their own devices and the government is losing interest in what happens to them.

There was talk of partnership, while at the same time the communities had to deal with budget cuts. There was talk of federal-provincial agreements, while the climate was often rife with tension and ambiguity. I will say, if I may, that we are far from having the ideal climate for the development of official language minority groups.

The budget allocated to official languages support has not been raised in eight years. Language rights are exercised according to their objectives, and the courts are constantly reminding us of this. This requires funding. There must be an investment in official languages; the official language communities must be supported.

Who in cabinet will advocate for the official language minorities with the Minister of Finance, so that he will provide financial encouragement to the official language communities in his budget this coming December?

When will the minister responsible for coordinating official language programs within the government, the Honourable Stéphane Dion, be prepared to introduce a consistent and effective action plan for official language minority communities?

[English]

ANTI-TERRORISM BILL

LAXITY OF LEGISLATION

Hon. Gerry St. Germain: Honourable senators, I rise today because I am disappointed with the government's forced closure of the debate on Bill C-36 in the other place, the proposed anti-terrorism legislation. My concern is not with the government limiting debate so that the bill will pass by Christmas, but rather my concern is about the fact that this legislation does not deal strongly enough with terrorists operating within Canada. The government refuses to consider any amendments whatsoever.

The anti-terrorism bill should be even stronger and police agencies should use it to prosecute all terrorists operating in the country.

This is not my quote, honourable senators, but that of Dave Hayer, whose father was assassinated on November 18, 1998, after he wrote an article in his newspaper, the *Indo-Canadian Times*, against terrorists, including those he believed were responsible for the 1985 Air India bombing, where 329 people were killed, many of whom were Canadians.

I knew Mr. Hayer's father to be a credible and respected man. At an anniversary service for his father, as reported in *The Vancouver Sun*, Mr. Hayer said:

Terrorism existed over the last 15 years in Canada and the government didn't do anything until after September 11.

Mr. Hayer also said that while there has been a lot of focus on militant Muslims because of the U.S. terrorism attack, other terrorists, including smaller groups, cannot be overlooked.

The ministers of the Crown are not listening. They prefer to call people names and label them as Holocaust deniers, militants, bigots, racists and religious zealots, particularly during election campaigns. The Prime Minister, when I questioned his support of ethnic groups, went so far as to compare me with Mr. Parizeau — a shameful comparison. The government must look at all types of terrorists, no matter what their religion and no matter what their background.

Honourable senators, politicians of all stripes must take the issue seriously, instead of using militants when they need their support to win nomination meetings and during election periods.

Politicians must be held accountable by not attending functions like the Tamil Tigers dinner that Minister Paul Martin and Minister Sheila Copps attended just before last year's general election. Functions for such organizations must not be promoted. The government needs to know that the members of the Sikh community also support an amendment, introduced by Canadian Alliance MP Chuck Cadman, that any assets seized from terrorist groups should be turned over to the victims of terrorism.

Honourable senators, the bottom line is that law-abiding East Indian community in B.C. are adamant that the laws have been too lax. It is time for the truth to come out because it always does eventually come out.

ALISTAIR MCLEOD

TRIBUTE

Hon. Laurier L. LaPierre: Honourable senators, the Ottawa Library Foundation's gala will be held tonight at the Congress Centre. The guest of honour will be Alistair McLeod, whose magnificent book *No Great Mischief* was published in Canada and around the world in 1999.

Mr. McLeod was born in North Battleford, Saskatchewan, in 1936. He was raised among an extended family in Cape Breton, Nova Scotia. He still spends his summers in Inverness County, writing in a clifftop cabin looking west toward Prince Edward Island. In his early years, to finance his education he worked as a logger, a miner and a fisherman. He writes vividly and sympathetically about such work.

•(1420)

In 1999, McLeod's first novel, *No Great Mischief*, which took him 10 years to write, was published to great critical acclaim and was on national bestseller lists for more than a year. It won, as everyone knows, the IMPAC Dublin Literary Award, which is one of the largest literary awards in the world.

I should like to read for honourable senators an excerpt from this book. It takes place at the end of the book, when the narrator takes his brother, Calum, back to Cape Breton to die:

By the glow of the dashboard lights I can see the thin scar on Calum's lower lip beginning to whiten. This is the man whose tooth was pulled by a horse. This is the man who, in his youthful despair, went looking for a rainbow, while others thought he was just wasting gas.

The car crests a high hill and in the distance, across the white expanse of the ice, I can see the regulated blinking of the now-automated light. It is still miles away. Yet it sends forth its message from the island's highest point. A light of warning or, perhaps, encouragement.

I turn to Calum once again. I reach for his cooling hand which lies on the seat beside me. I touch the Celtic ring. This is the man who carried me on his shoulders when I was three. Carried me across the ice from the island, but could never carry me back again.

Out on the island the neglected freshwater well pours forth its gift of sweetness into the whitened darkness of the night.

Ferry the dead. Fois do t'anam. Peace to his soul.

"All of us are better when we're loved."

[Translation]

ROUTINE PROCEEDINGS

TRANSPORTATION APPEAL TRIBUNAL OF CANADA BILL

REPORT OF COMMITTEE

Hon. Lise Bacon, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Tuesday, November 27, 2001

The Standing Senate Committee on Transport and Communications has the honour to present its

EIGHTH REPORT

Your Committee, to which was referred Bill C-34, An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts, has, in obedience to the Order of Reference of Tuesday, November 6, 2001, examined the said Bill and now reports the same without amendment, but with observations which are appended to this report.

Respectfully submitted,

LISE BACON
Chair

(For text of report, see page of today's Journals of the Senate, p. 1013.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Gill, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[English]

FOOD AND DRUGS ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Nicholas W. Taylor, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Tuesday, November 27, 2001

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

EIGHTH REPORT

Your Committee, to which was referred Bill S-18, An Act to Amend the Food and Drugs Act (clean drinking water), has, in obedience to the Order of Reference of

Thursday, May 10, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

NICHOLAS W. TAYLOR
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Taylor, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

EXPORT DEVELOPMENT ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. E. Leo Kolber, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Tuesday, November 27, 2001

The Standing Senate Committee on Banking Trade and Commerce has the honour to present its

ELEVENTH REPORT

Your Committee, to which was referred Bill C-31, An Act to Amend the Export Development Act and to make consequential amendments to others Acts, has, in obedience to the Order of Reference of Tuesday, November 20, 2001, examined the said Bill and now reports the same without amendment, but with observations, which are appended to this report.

Respectfully submitted,

E. LEO KOLBER
Chairman

(For text of Appendix, see today's Journals of the Senate, p. 1015.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

QUESTION PERIOD

RESPONSE TO ORDER PAPER QUESTION TABLED

COSTS AND DETAILS OF APEC INQUIRY

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the response to Question No. 17 on the Order Paper, raised by Senator LeBreton.

[English]

ORDERS OF THE DAY

NUNAVUT WATERS AND NUNAVUT SURFACE RIGHTS TRIBUNAL BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Adams, seconded by the Honourable Senator Watt, for the second reading of Bill C-33, respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts.

Hon. Janis G. Johnson: Honourable senators, I am pleased to speak to Bill C-33 today. This bill, the Nunavut Waters and Nunavut Surface Rights Tribunal Bill, establishes in full force of law two agencies already operational. It is divided into two parts. Part 1 of the legislation establishes the Nunavut Water Board, which has been operating since 1995. It is responsible for issuing licences to groups or individuals whose activities will affect Nunavut waters.

•(1430)

Part 2 of the bill establishes the Nunavut Surface Rights Tribunal, operational since 1996. The tribunal examines and settles disputes over surface rights on Inuit-owned lands and determines conditions of access to those lands for developers. It establishes compensation for developers' actions that result in harmed wildlife on Inuit land.

The establishment of these agencies is part of the 1993 Nunavut Land Claim Agreement that came into being two to three years later, de facto, after the agreement's deadline for the legislation lapsed. However, they have existed and operated in an atmosphere of uncertainty following the failure of successive Liberal governments to introduce appropriate legislation. It is important that the government is now finally meeting the obligations set out in the land claim agreement.

Honourable senators, for the most part this seems to be a fair and straightforward piece of legislation that meets the requirements set out in 1993. I understand that it follows the format used in the other Canadian territories. Hopefully, these have been fine-tuned over the years since the Northern Inland Waters Act was first implemented in 1972, establishing the first water boards in the Northwest Territories and Yukon.

The passage of Bill C-33 will provide the clarity and solid legal framework for which the Nunavut agencies have waited

patiently for over half a decade. It will allow them to make decisions with confidence and enforce them with equal confidence, if necessary. The lack of this certainty has caused some difficulties over the years for jurisdictions were unclear and the validity of the agencies was openly questioned. The certainty that Bill C-33 will bring is critical in Nunavut where it will encourage much-needed economic development prospects. Industry will be more likely to expand into areas where the regulations and conditions for development are clear and well defined.

The bill now before us is an improvement over the previous versions, Bill C-51 and Bill C-62. Both of these were changed following the amendments suggested in committee and in further negotiations with Nunavut Tunngavik Incorporated, the organization that negotiated and will now act as watchdog in the implementation of the land claim agreement.

Honourable senators, I am glad to see that the advice garnered from this additional consultation was at least in part heeded and that legislation now before us is largely consistent with the agreement, and, it would seem, with the needs and desires of the people of Nunavut. I am glad that in providing this stability and backing up Inuit decisions about their resources, this legislation moves Nunavumiut toward greater self-determination. This is very much in the spirit of the 1993 agreement, and I hope is the direction of the future of Canada's Aboriginal peoples. The Nunavut Surface Rights Tribunal will allow Inuit to be compensated fairly for any damages done to their livelihood as a result of development, and this is important.

I am also glad to see that accountability is addressed in this legislation. Both the board and the tribunal will submit to an annual audit to ensure the transparency of their actions. The tribunal will be examined by the Auditor General, who will also examine the water board, if the minister so directs. I strongly support this inclusion of the Auditor General, as our party believes it is critical that public agencies be accountable to the people through their Parliament. This provision also has the added benefit of supporting the stability and certainty that will accompany the entrenchment of these agencies in law.

Certainty will also allow greater power to safeguard Nunavut natural resources. This is the most important aspect of the proposed legislation in my view. I think especially of the water board's important role. Water is the hottest environmental issue of the 21st century. This is especially true in the Arctic where the environmental health is known to be a canary in the mineshaft.

Honourable senators, the irony, of course, is that most Canadians probably do not know that the canary is already showing signs of sickness. We tend to think of the Arctic as a vast and pristine wilderness untouched by industry and natural resource harvesting. We believe that it is an untapped source of natural resources, water in particular, that will sustain us in the years to come when other worldwide resources run out.

The fact is that the delicate balances that hold the Arctic together are shifting. Global warming is changing the North. Inuvialuit in Sachs Harbour in the Northwest Territories noted in a video released late in the year 2000 that vast changes are taking place. Insects and birds never before seen in the far north are appearing on the land. The ice is unstable and unpredictable to a people who normally read it like we read books. Hunters are worried about going out on the ice for fear it will be too soft to support their weight. The permafrost is receding, and no one knows the full consequences of these changes.

Water is particularly vulnerable in the North. One only need ask the Freshwater Institute in my hometown of Winnipeg about the state of the waters flowing into Hudson Bay, the drainage point for much water from the south. From my home province of Manitoba, for example, water crosses the American border through the Red River into Lake Winnipeg, where I live, and flows on to Hudson Bay through the Nelson River. If the state of North Dakota is successful in its current project to drain Devil's Lake into the Red River, and complete the controversial Garrison Diversion Project, waters from as far south as the Mississippi will eventually be found in the Arctic.

There are some serious issues to be examined in this transferral of Arctic waters that is, unfortunately, beyond the control of Nunavut or even, it seems in this case, Canada.

Honourable senators, legislation like this helps us to impose restrictions on the use of water to protect it from untoward pollution. It will mean nothing if we do not move in a prompt and serious way to establish active international cooperation on the preservation of our water resources. We are all linked through our waters. We will all share the same fate. This makes safeguarding what relatively pristine waters still exist under the control of Nunavut even more urgent.

Honourable senators, we know the state of waters in southern Canada and the United States. Our many polluted lakes and rivers are the result of years of misunderstanding, naivety and sometimes outright abuse. This makes it all the more important for the Nunavut Water Board to act in a way that properly cares for the remaining quality of the territory's water resources. I would encourage the board to keep these things uppermost in mind when issuing licences.

Let us hope that mistakes in the south will not be repeated in the North. It is my hope that a water board with a solid legislative mandate, and the legal capacity to back it up, will enable the people of Nunavut to manage appropriately the precious water resources in their territory. It is important that the people who have been stewards of these resources for so long, and who in many cases depend on them for livelihood, continue to watch out for them. Inuit can do this best in ways consistent with their long experience of the northern environment. Naturally, this will have to be balanced with developmental

considerations. This is the definition of sustainable development, a concept my party strongly supports.

The situation is particularly difficult in Nunavut where the cost of even the most basic things is extraordinarily high. It is my hope, however, that this balance can be achieved. With its vast tracts of land yet untouched directly by industry, we can only hope that we do it right this time around.

As I stated a moment ago, this bill is fair-minded for the most part. There are points that I believe will need to be examined more closely when the bill is referred to committee. We need to regard the great amount of power wielded by the minister with due caution. The minister has the final say in issuing, renewing and revoking major water licences in Nunavut — the right to overturn decisions made by the board. Ottawa is a long way from Nunavut, and we hope that, if this bill remains as it stands, without any kind of provision for the Inuit to take full and unfettered control of their affairs, the minister approaches these decisions with all due promptness and respect.

I understand that a recent amendment to this bill limits the minister's veto to a maximum of 90 days. I support that amendment. This will encourage the stability the bill aims to create by ensuring that the water board and the concerned parties are not waiting indefinitely, with hands tied, for the minister's approval.

•(1440)

I would like to see a provision included in this bill for a five-year review of the minister's power to approve water board licences. I hope this will be examined in committee. It is important that in this transitional period there be an external body to review major water licensing decisions. I believe that the necessity for this body will disappear with time as the water board gets used to its legal powers. An independent review of the minister's role after a specified period of time could assess this progress.

There is also danger of ministerial abuse in the appointment of members to both the water board and the tribunal, which is, again, the prerogative of the minister. Although half of the board's members will be nominated by Nunavut Tunngavik and another quarter nominated by the territorial minister responsible for natural resources, the federal minister of Indian Affairs is still responsible for nominating another quarter of the candidates, approving nominations and appointing all members.

The minister's power to appoint is more absolute with respect to the tribunal, where the only constraint is that two of the potential 11 members be residents of Nunavut. This seems like a paltry number, considering that the Nunavumiut will be most affected by the long-term consequences of the tribunal's decision. We would do well to examine these powers closely.

It will be important to examine closely some further issues in the committee. Both Nunavut Tunngavik and the government of Nunavut have recently expressed some disappointments with the committee deliberations in the other place. Two concern the wording of the non-derogation clause, one concerns the open-ended nature of the minister's right of approval on major water licences, and one concerns the potential for the government to charge Inuit living on Inuit-owned lands fees for use of waters which cross those lands.

This last point strikes me as a particularly strange oversight. I understand that the land claim agreement specifically notes that its designated Inuit organization, currently NTI, has "exclusive right to the use of water on, in or flowing through Inuit owned lands." These lands make up about 20 per cent of Nunavut and are held by Inuit in fee simple title. This land was divided from the remaining Crown land by the 1993 agreement. However, Bill C-33, clause 82, seems to leave open the possibility for the government to collect fees for the use of such waters. This, of course, would contradict the land claim agreement, which states implicitly that NTI has exclusive rights over them. A simple amendment to this clause would clear up this glaring and inexplicable error.

I understand that this bill will be referred to the Standing Senate Committee on Energy, the Environment and Natural Resources, and I have no doubt that witnesses from NTI and the territorial government will be addressing these issues. I hope that the honourable senators on the committee will listen carefully to them during its hearings to better understand and address their concerns. I certainly will be following their proceedings with great interest and be involved in the hearings.

Assuming that these concerns will be given due consideration at the committee stage, the Progressive Conservative Party will likely support a speedy passage of this legislation as we believe it will greatly benefit the people of Nunavut, and they have waited for this bill long enough.

Hon. Nicholas W. Taylor: Honourable senators, the honourable senator is not a member of our committee, although she has done an outstanding job in her presentation. I should like to ask her one question.

The Hon. the Speaker: Will the Honourable Senator Johnson take a question?

Senator Johnson: Yes.

Senator Taylor: The question I have is this: In the honourable senator's research, did she arrive at any feeling as to whether or not water could be exported outside the country and sold in bulk by this board?

Senator Johnson: No.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

On motion of Senator Adams, bill referred to Standing Senate Committee on Energy, the Environment and Natural Resources.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Peter Stollery, with leave of the Senate and notwithstanding rule 58(1)(a), moved:

That the Standing Senate Committee on Foreign Affairs have power to sit at 5:30 p.m. today, Tuesday, November 27, 2001, in order to hear the Minister of Foreign Affairs even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, with amendments) presented in the Senate on November 8, 2001.

Hon. Charlie Watt: Honourable senators, I wish to make a comment on the proposed amendment concerning clause 38(2)(c) and (d), as well as clause 50(1) of Bill C-7. The effects of those two amendments are to ensure and reinforce simply and clearly that judges, in sentencing youthful offenders, give special attention "to the circumstances of Aboriginal young persons."

I am concerned that certain judges will not administer and interpret the new bill, if it becomes law in its present form, in a way that reflects the special sentencing considerations of youthful offenders. Certain judges are literalists and will read no more than Part 4 of Bill C-7 dealing with sentencing. Nowhere in Part 4 of Bill C-7 is there mention of a special consideration being extended to the Aboriginal youthful offender. For this to happen, judges and lawyers will have to make a reference to clause 3(1)(c)(iv). This subparagraph provides, among many other things, that the criminal justice system for young offenders respond to the needs of Aboriginal young persons. It would be up to the judge and/or the lawyer to then apply this principle to the sentencing, and he or she might very well fail to do so because of the obscure way in which this principle is applied to sentencing. Indeed, one could argue it has no application since it was not mentioned in the sentencing portion of Bill C-7.

How can I be assured that youthful Aboriginal offenders will be given that extra consideration in sentencing that the bill intends, when no specific and direct mention of Aboriginal youth offenders is made in Part 4 of Bill C-7 dealing with sentencing?

In general, I support Bill C-7 in its attempt to set out a young criminal justice system. It is very much an improvement over the current Young Offenders Act. We very much need a youth criminal justice system in this country that commands respect, takes into account the interests of victims, fosters responsibility through meaningful consequences, effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over reliance on re-incarceration for non-violent young persons.

• (1450)

We need to be sure that the sentencing of Aboriginal youthful offenders will be given the special consideration Parliament intends, and that these concerns will not be buried in a section of the act that has general application. What better way to do this than to reinforce the application of this principle through repetition in the sentencing proportion, Part 4, of this bill?

Honourable senators, we should do the right thing. If there is to be any reference to Aboriginal people in a law, I think it should be spelled out and not merely dealt with in the preamble, leaving the interpretation to the discretion of a judge. As legislators, we should ensure that matters that refer to Aboriginal people are dealt with in the body of the legislation where they will have some enforceability.

The approach I am suggesting is long overdue. For as long as Aboriginal people have lived in this country, we have never been given full consideration in the drafting of legislation. In this particular instance, depending on the circumstances, this provision might or might not be used. It is for that reason I rise to speak to you today. Honourable senators, I plead with you to give careful consideration to my concerns. I recognize that some people may believe that it is sufficient to refer to Aboriginal people in the interpretive provisions so that they will be given special consideration.

This particular issue is a concern to everyone. I am not entirely sure whether some of my Aboriginal colleagues fully understand what application this particular piece of legislation will have to Aboriginal people. Most likely we will lose the proposed amendment. However, at the end of the day, we can always decide how to deal with that. I wanted to caution honourable senators about the possibility that, under this very important bill, youthful Aboriginal offenders may not be given special sentencing considerations.

It does not matter how you carve it. You can even frame it and hang it on your wall. As I have stated a number of times, if no money is made available to set up additional educational programs and to build additional infrastructure at the grassroots level, nothing will change for the better, and the provisions of this proposed act will be absolutely meaningless.

Nevertheless, honourable senators, I am convinced that, if we are to do something for Aboriginal people, we must do it right. Let us not take a piecemeal approach just to please the politicians. That approach, at times, had led us down a road we might not want to be on.

Again I would plead with you, honourable senators, to take this matter seriously because this is a serious matter. I am not standing here for the pleasure of standing in front of you. We are dealing with young people. We are dealing with young people's minds. I would like to rest assured that the judges and the lawyers will do the right thing. A number of times history has proven that that does not always happen. I am sure that honourable senators will do the right thing.

Hon. Tommy Banks: Would the honourable senator entertain a short question?

Senator Watt: Of course, honourable senators.

Senator Banks: Is the amendment to which the honourable senator refers one which is contained in the committee's report or is it one which the honourable senator intends to move at third reading?

Senator Watt: Honourable senators, it is dealt with in the committee's report. I am asking honourable senators to support my amendment as referenced in the report of the committee.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, in his speech, Senator Watt mentioned that the report could be rejected in this house. Could the vast majority of the senators not put aside partisan considerations and recognize in the report of the Standing Committee on Legal and Constitutional Affairs a determination to correct some of the shortcomings of the bill?

[English]

Senator Watt: Honourable senators, I am not sure whether I am able to answer the honourable senator's question clearly and directly.

I believe that this particular matter which was dealt with by the committee is serious. However, as I said, you never know what will happen at the end of the day. I am pleading with my Aboriginal colleagues, more than anything else, to not take this issue lightly but to take it seriously. From the standpoint of improving the bill, we might all vote for my amendment, but I will still have difficulty understanding what bigger picture is contemplated. When narrowing it down to Aboriginal matters contemplated in the proposed legislation, reference is made to Aboriginal considerations, but that reference is not repeated within the body of the bill. Honourable senators, I am confident that I know what I am talking about, but I am not confident about what will take place here.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I, like all honourable senators in this chamber, have been profoundly impressed with the appeal that we have heard from our colleague Senator Watt who, in very eloquent and upfront terms, has made an appeal that speaks to the needs and the rights of the Aboriginal youth of this country.

Several files that are coming before this honourable house will challenge us as individual members of this chamber to assess whether we are primarily concerned with improving our curriculum vitae or whether we will accept the proposition that, when we come to the Senate, our resumé will be locked in the safe and that we are here to do the right thing.

As senators, one of the things that we are called upon to do is to take into consideration the interests of minorities in Canada. That is the purpose of this place. When you stand for the cause and you articulate the cause and you promote it and protect the rights of the minority, that is not popular. It will, particularly, not be popular in terms of the majority government of the day, of whatever party.

• (1500)

A certain crisis of conscience is descending on us in this chamber, and history will be harsh with this generation of us who have the privilege to serve in this chamber if we do not from time to time respond to the constitutional obligation that the Fathers of Confederation defined for this chamber.

I have sat on the opposite side of the house and, like many honourable senators, from time to time I have held my nose and supported certain propositions. However, there are a few bills and a few resolutions that are brought forward for which, quite frankly, we have to do better than hold our noses. I have the greatest respect for the extra difficulty that is placed before honourable senators on the government side in a second chamber because I sat on that side of the house. On the other hand, there were a few measures about which we felt it was more important to follow our conscience as senators than it was to toe the governing party's line.

If we cannot respond as defenders of the minority, as defenders of the children — in particular, First Nations children — when

we hear an appeal from a representative of the First Nations people of Canada who is most articulate in speaking for his people and especially for the youth of his community, then perhaps the time has come to abolish this place. I believe this is that serious.

We have a committee that has done excellent work under the able leadership of Senator Milne. The committee members heard from an extraordinary number of witnesses. Hopefully, I will never rise in my place — and someone should shoot me down if I try — to criticize my colleagues when they put that much effort into a thorough examination of a piece of legislation.

Without offence to any of the other committees, we are fortunate in this house to have the Standing Senate Committee on Legal and Constitutional Affairs. It is one of our most assiduous committees in terms of the workload on legislation. The members of that committee heard some 60 witnesses. In reading the transcripts of those committee meetings, I learned that there was a tremendous appeal from a wide cross-section of Canadians asking the Senate, as the chamber of second reflection, to fill in and respond to some serious lacunae.

Honourable senators, issues were raised in the context of measuring what we are doing in Canada against our international obligations, which we undertook when we ratified the United Nations Convention on the Rights of the Child. That initiative was led by former Prime Minister Brian Mulroney and happily carried on a priority level by the government of the day with leadership from distinguished senators, such as Senator Pearson.

I understand that there is a margin of interpretation, as with anything, as to whether a particular way of responding to the programmatic rights outlined in the UN Convention on the Rights of the Child is more effective. That is a judgment call. There are many ways to skin the proverbial feline creature. There are equally many ways in which to meet the obligation that is provided for in the United Nations Convention on the Rights of the Child. When we are able to assess undertakings that deviate from the standard that is contained in the international Convention on the Rights of the Child, that is when the amber light goes off. In committee meetings, as I understood the proceedings, several amber lights have been flashing.

Therefore, honourable senators, we must look at these amendments. I have heard the argument made by colleagues who have done the detailed work for the chamber in committee that they are a minimal requirement to make this bill acceptable. It is not a maximum requirement, but rather a *de minimis* proposition. We can separate out some of the amendments, and when we focus on the amendment that has been addressed by the Honourable Senator Watt, there is an area where we can be surgical. I would lend my support enthusiastically to the proposition advanced by Senator Watt, particularly in terms of the rights of children in our First Nations communities.

On motion of Senator Nolin, debate adjourned.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, before going to other business, I wish to introduce visiting pages from the House of Commons.

Teresa Dubois of Rossland, British Columbia, is studying in the Faculty of Social Sciences at the University of Ottawa and is majoring in political science. Welcome.

Divya Raman is enrolled in the Faculty of Arts at the University of Ottawa. Divya is from North York, Ontario. Welcome.

Benjamin Sanders is from Winnipeg, Manitoba, and is enrolled in the Faculty of Social Sciences at the University of Ottawa, majoring in political science.

Welcome to the Senate of Canada.

STUDY ON ROLE OF GOVERNMENT IN FINANCING DEFERRED MAINTENANCE COSTS IN POST-SECONDARY INSTITUTIONS

REPORT OF NATIONAL FINANCE COMMITTEE—
DEBATE CONTINUED

On the Order:

Resuming debate on consideration of the ninth report of the Standing Senate Committee on National Finance (study on the role of the government in the financing of deferred maintenance costs in Canada's post-secondary institutions), tabled in the Senate on October 30, 2001.—(*Honourable Senator Banks*).

Hon. Tommy Banks: Honourable senators, everyone in this chamber is familiar with the idea of an alarm bell that keeps going off, probably in the neighbour's apartment, and we cannot get at it to shut it off. We know how that can be of great annoyance. That is somewhat where we are with respect to our university plant facilities.

In its 1997 report, the Special Senate Committee on Post-Secondary Education brought to the attention of the Senate, and to Parliament, the urgent nature of the deterioration of the whole physical plant structure of our university buildings. I believe it is they who dubbed it "deferred maintenance." Deferred maintenance is bureaucratic shorthand for "The roof is leaking and we cannot fix it properly because we have to spend too much money on the other stuff; therefore, we will tar it up for a while and hope it somehow holds together for another year or two."

The alarm bell is still going off from 1997, and the Government of Canada has not yet done anything about the situation, nor perhaps has it been able to, in terms of planning and in terms of priorities. The alarm bell has been rung again by

the report of the committee to which the attention of honourable senators is now commended.

Honourable senators, the report points out that nothing of real substance has been done with respect to that physical plant. We are proud that the Government of Canada is spending hundreds of millions of dollars on research, but the facilities in which that research is being done and, it is hoped, will be done are literally falling apart.

The committee began its examination of the question prior to September 11. There is little doubt that had those events not intervened, the nature of the report and the urgency placed upon us to do something about this situation would have been greater than has been the case. Despite the fact that it is by definition a slightly lower priority now, things are continuing to get worse with our physical plants.

•(1510)

I commend the report to the attention of honourable senators. All of the recommendations have value and merit and someday we should consider them all. When things permit, we must ensure that we do not get into the mug's game of saying that we will rob one program or urgent necessity to take care of another. The longer we let things like this go, the more expensive they will become. These matters are already so expensive that governments at all levels will have to become involved. The social union framework permits the Government of Canada to become involved in these matters.

Some advantage might be achieved within our post-secondary institutions by examining the question of capital gains exemptions. Governments do not like to hear about tax reductions, because that is the same as giving away money. However, in the United States, universities have the advantage of capital gains exemptions that gain them huge endowments, operating and capital funds. As senators, we must continue to consider this issue. Sooner or later, we will do this. As the commercial says, "You can pay me now, or you can pay me later." The later we do it, the more it will cost.

I am happy to commend this report and its contents to honourable senators for their consideration.

On motion of Senator Callbeck, debate adjourned.

STATUS OF LEGAL AID PROGRAM

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Callbeck calling the attention of the Senate to the status of legal aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal assistance, for both criminal and civil matters.—(*Honourable Senator Chalifoux*)

Hon. Thelma J. Chalifoux: Honourable senators, I am pleased to join with several of you in drawing attention to some of the problems of legal aid across Canada. I wish to particularly highlight the enormous challenges that Aboriginals in Northern Canada face when seeking legal aid.

Canada has a rich diversity of Aboriginal cultures. In Southern Canada, Aboriginals were traditionally agriculturalists. In the North, they were hunters and gatherers who led a migratory lifestyle. After a brief analysis, one can see that the Aboriginal fact in Canada is one of profound diversity. Such diversity challenges the capacity of government programs to serve all Canadians.

The concept of legal aid is a great expression of our generosity and compassion for fellow Canadians. Legal aid enhances our citizenship and strengthens our social and political union from coast to coast to coast. However, it is a program that is difficult to apply and administer evenly and equitably across our nation.

In her excellent presentation of this subject, Senator Callbeck has given an overview of the current legal aid funding relationships between the federal and provincial governments and has shown us how the program continues to be fighting for tax dollars. The problems with current funding situations are well known. Therefore, it is not necessary for me to repeat what Senator Callbeck has already said about that subject. I will add, however, how much I agree with Senator Callbeck's view that more federal dollars for legal aid are urgently needed. I doubt if many Canadians would find fault with the position she has taken and the arguments that she has presented.

Aside from the discussions about money, the legal aid program has unfortunately several flaws. When it comes to the challenges of providing fair treatment for Aboriginal Canadians in our system of justice, those Canadians who administer the program in the northern regions of our provinces and in the Far North are faced with more than the problems of poverty and minimal education that are usually discussed. They are also faced with administering a program in a vast territory with difficult and limited access to communication.

In our Canadian North, one is always faced with the reality of diminished justice. Too often the search for balanced judicial decision-making in our nation has a geographical twist to it. If it is your destiny to be a Canadian living and working in remote areas of our nation, it may also be your fate to receive a quality of justice that fails to meet the reasonable standards that one expects in Southern Canada. This is likely even more true if you are an Aboriginal Canadian.

Let me give honourable senators one of many examples of our geographical challenges. Moosonee, in Northern Ontario, is an isolated community. The population of Moosonee and nearby Moose Factory is 85 per cent Aboriginal. When we add other communities in the area, namely, Attawapiskat, Fort Albany, Peawanuck and Kashechewan, the population is 100 per cent Aboriginal.

In Moosonee, there is a legal aid clinic. Sittings of family, criminal and young offenders courts are held once a month. There are, however, no sittings of the Ontario Court General Division or the Small Claims Court. Legal aid lawyers arrive only the day before the sittings of the court to interview a client who is to appear in court the following day. In remote areas, there are no permanent legal aid lawyers to service the best-intentioned legal aid programs. The recent report of the Ontario Legal Aid Review states that lawyers are not allowed sufficient time for their clients to adequately prepare cases in order to protect the client's interests. Another issue is that legal aid lawyers are restricted by legal aid tariffs. The reasonable question to ask is: What kind of representation do Aboriginal Canadians receive from tariff-restricted legal aid advice?

Let me show honourable senators how this often works. Accused persons with reasonably paid lawyers have more options.

• (1520)

A reasonably paid lawyer would have time to determine a plausible defence, which would lead to a "not guilty" plea. Should the reasonably paid lawyer advise that a "guilty" plea is appropriate, the lawyer may then engage in plea bargaining.

The vast majority of Aboriginal Canadians in the North do not have the advantages of these nuances and options. Most Aboriginal Canadians who appear before the courts have no notion of the concept of plea bargaining. Typically, the legal aid lawyer interviews a client for the first time a few hours prior to going into court. There is no opportunity for a thorough and nuanced defence to be developed. Justice is clearly not being served in such cases.

A recent dispute in New Brunswick this year illustrates the problem of the availability of legal aid for Aboriginals. A group of Aboriginal fishermen was charged with having illegal lobster traps. The fishermen responded that their treaty rights were being challenged. They sought legal aid. It was calculated that to mount such a defence, a defence concerning treaty rights in the New Brunswick courts, would cost about \$50,000. That is not an unusual amount of money in cases of this nature. The \$50,000 required is fully one quarter of the annual legal aid budget in New Brunswick.

When people are denied legal aid, honourable senators, the entire system breaks down. If we are to have fair trials and even-handed justice for all in Canada, we must have an adequately funded legal aid safety net.

These problems are reinforced by a third issue, which I characterize as the realities of the spoken word. The average Aboriginal Canadian in the Far North at best speaks rudimentary English or French. The English and French spoken by the legal culture are virtually beyond the comprehension of the average Aboriginal Canadian in the North.

Furthermore, in addition to both French and English being official languages everywhere in Canada, in the new territory of Nunavut, there are six other official languages — Chipewyan, Cree, Dogrib, Gwich'in, Inuktitut and Slavey. In Northern Ontario, where Aboriginal languages do not have official status, the first language of virtually all natives is either Ojibwa or Cree. It is not English or French. Aboriginals are, therefore, at a serious disadvantage when appearing before the courts.

The report of the Ontario Legal Aid Review states that:

...most Aboriginal people who appear in court cannot tell anyone after court is over what exactly happened, or what impact the decision will have on them. This is often true even in instances where a court interpreter was present during the proceedings.

A fourth issue is revealed in another study — the discovery that young Aboriginal Canadians, in particular, sometimes plead guilty when faced with charges just in order to get it over with. As a result, they probably face a future of unemployment because they receive a criminal record, and they probably make themselves targets of the police, which leads to more severe treatment by the courts in any future difficulties with the justice system.

Honourable senators, in all of this discussion, I want to emphasize that I am not demeaning in any way the level of competence of lawyers who provide legal aid. I am merely stressing that the application of legal aid in the North, at present, does not give opportunities for negotiated justice. Simply stated, the poor do not get the kind of attention that a level playing field would provide. More specifically, the Aboriginal community has not been able, generally speaking, to benefit from legal arguments based on the Charter of Rights and Freedoms to the same extent as other Canadians, simply because the resources in the legal aid system in the North are not available to enhance the preparation of individual cases.

A further area of contention is the level of eligibility for legal assistance. There are substantive disparities across our nation in the income category requirements for legal aid applicants. At present, eligibility levels are a patchwork across Canada. Surely, it is appropriate in our federal state to establish and enforce national standards of eligibility. As they say in road language, someone is asleep at the switch here.

We urgently need to address this issue. All Canadians should enjoy the same benefits under nationally funded programs.

I say to you, honourable senators, that our nationally supported and partially funded legal aid program should have all the aspects of portability, just like medicare and the Canada Pension Plan.

There is also the fact that many persons currently appear before the courts without the benefit of representation. I regret that there are no statistics available on this question. Anecdotal

evidence, however, suggests that there are many, far too many, Canadians who do not benefit from legal representation and that the Aboriginal community is disproportionately represented in this group. Perhaps as much as 40 per cent of the total number of Aboriginals involved in the legal system are without representation.

Honourable senators, it is very clear that those who are not represented in court are less likely to be acquitted or given conditional discharges. All too frequently, Aboriginal Canadians find that the adversarial nature of the judicial system, pitting the Crown against the defence, creates a situation where the police and the Crown are plentiful in number on one side, articulating the case for the prosecution, and on the other side, the defendant is alone and silent. The recent Report of the Aboriginal Justice Inquiry of Manitoba found that the main reason that 60 per cent of Aboriginal women plead guilty is the absence of legal representation. The report cited evidence that Aboriginal women, in particular, are often told to simply plead guilty in the absence of legal representation.

No doubt, the overarching concern about legal aid in Northern Canada is the lack of an adequate communications strategy among the Aboriginal communities on the part of those providing legal aid services. The availability, the benefits and indeed the necessity of legal representation in Canadian courts must be communicated to Aboriginal Canadians in a manner that is understandable to everyone.

Honourable senators, fairness and justice for all Canadians is an enormous subject. During my time left in this upper chamber, I will continue to speak about these important questions.

In summary, honourable senators, I should like to make the following recommendations.

First, future agreements to provide national funding for legal aid programs should include a commitment from the provinces and the territories to seek national standards for the delivery of legal aid to Canadians.

Second, priority should be given to the recruitment and training of personnel for legal aid clinics who speak Aboriginal languages.

Third, the legal aid program needs a comprehensive communications strategy that leads to a substantial reduction in the number of Canadians that go to court without legal representation.

Fourth, in general, there must be more flexibility in the approach to legal representation to account for the wide diversity of those who seek legal aid and the great variety of their needs. This would include more flexibility regarding legal aid tariffs.

Fifth, there should be a shift from the adversarial approach to the mediation and negotiation approach in all of our judicial processes.

Hon. A. Raynell Andreychuk: Would the Honourable Senator Chalifoux take a question?

Senator Chalifoux: Yes.

Senator Andreychuk: The matters raised by the honourable senator in a very detailed manner are extremely important. Witnesses who came to committee on Bill C-7, including the Minister of Justice from Saskatchewan, graphically said that our criminal system does not fit the Aboriginal community.

I hear the honourable senator saying that legal aid could be improved. However, would it be more appropriate that we look at an entirely different system of justice that incorporates the values and the concepts of the Aboriginal people?

I note that "restitutional" forms of justice and sentencing circles take into account not guilt or innocence in an adversarial setting, but how a community comes to grips with an incident. The accused and the victim both play a role in the process.

Does the honourable senator think that it would be valuable that we come together, particularly in the Senate, to say that it is time to really look at Aboriginal justice seriously in this country?

• (1530)

Senator Chalifoux: I thank the honourable senator for the question. There are two issues to look at. The first one concerns racism in the judicial system. It is prevalent in Saskatchewan, where another case is coming to light, and to which I will speak in the coming week.

The second issue concerns the legal aid system and what happened in respect of one of the recommendations whereby Aboriginal lawyers, who speak Aboriginal languages, would work within the system to help our people. We have two systems, one for the northern Aboriginal and one for the urban Aboriginal. In the urban Aboriginal system, many Aboriginals are third and fourth generation, so they truly understand the urban situation and the non-aboriginal situation.

However, we have regions where there is little knowledge of the whole system, and that is what we must examine. It saddens me when I see people, young and old alike, going into the courts and not understanding anything of the process. I can cite one instance: One of the fellows went into the court and the judge said to him, "Well, have you ever been up before me?" The fellow replied, "I do not know judge, what time do you get up in the morning?"

Hon. Senators: Hear, hear!

Senator Chalifoux: That was the interpretation. I was there, in the court, and I heard that exchange. It is a good example of the misunderstandings and the lack of interpretation that we really have to look at in the regions, where English and French are not the first languages of the people. We must look at that issue so those kinds of situations do not continue to occur.

Honourable senators, we must examine the legal aid system in Canada.

The Hon. the Speaker: Honourable senators, I advise Senator Chalifoux that her time has expired.

On motion of Senator Milne, debate adjourned.

AGRICULTURE ISSUES

INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator Tunney calling the attention of the Senate to Canadian agricultural issues, specifically grain, dairy and hemp.—(*Honourable Senator Milne*).

Hon. Lorna Milne: Honourable senators, I will give you my annual update on the Industrial Hemp Industry in Canada and an overview of some of the problems that the industry faces. There is no question that this new agri-business has great potential in Canada, as long as it can keep up with the demand for hemp products that is growing by leaps and bounds. As an aside, I invite all of you to attend "The Night of One Thousand Dinners," where you will be able to sample hemp ice-cream and other hemp treats in my office.

Honourable senators must surely be aware, from my many speeches on this topic, that the deregulation of hemp production in Canada spawned numerous pilot projects, as entrepreneurs attempted to determine whether hemp could be grown and processed profitably in Canada and whether the products produced would be competitive in a variety of markets. I can say with confidence that the results are in, and the vast array of products being produced from Canadian hemp are truly remarkable. Everything from T-shirts to horse bedding, to car parts, to food products can be profitably produced by Canadian companies. The future is bright for the industry.

There is one crucial issue, though, for the hemp industry that deserves the attention of the Senate — the matter of bridge financing for growing companies. As I noted earlier, the pilot projects completed by the leaders in the industry have all indicated that hemp production in Canada will be profitable. These profits will come once production begins on a large scale. However, it appears that the banks, venture capitalists, and government institutions are not prepared to offer the hemp industry the capital it needs to expand production.

Honourable senators, I will take a couple of minutes to describe the truly unique and difficult situation currently facing hemp producers. The typical Canadian hemp producer has now spent three or four years researching the crop, growing hemp in different fields, designing machinery that will harvest, process and package the hemp for the market. Hemp growers have had fantastic success in finding customers for all kinds of products.

I have heard many reports to the effect that corporations from around North America — from big three car makers to small health food chains — find that Canadian hemp and hempseed oil products are of the highest quality, and they are anxious to buy. Every time I visit, or hear from, one of Canada's hemp producers, I hear of new products with great success stories.

Unlike any other new business or industry, hemp growers start out small. In order to keep costs under control during the research phase, Canadian hemp producers, quite properly, have kept their pilot projects and research initiatives to a modest and manageable size. In fact, in most cases, that was the only option, because the research and development was funded by individual families or groups of families who invested the better part of their assets, with some assistance from government programs, I must say.

Now, however, with several years of research and proven products behind them, these companies are ready to grow at an exponential rate beginning with the 2002 growing season. Honourable senators, I am certain this will come as no surprise to you, in order to grow, the hemp industry needs an infusion of capital. Simply put, these small operations need access to money so they can build processing plants, buy expensive machinery, and transport large quantities of their products.

These companies are often family run, and they do not have access to the millions of dollars needed to build the required infrastructure. Some senators may be thinking that if they need money, they should go to the bank, or find an investor, or search for a government program. Well, that was my initial reaction, too, but I will deal with each of these institutions in turn, and I will explain to you why they have not yet come on board.

First, we can look at the banks, which will lend money to customers with a long-established track record of financial success. All companies in the hemp industry are start-ups, so no one can access that funding. That is strike one against the hemp farmer.

If banks will lend to start-ups, they tend to look at industry trends. They may have dealt with a certain kind of business before, and can therefore work out something based on comparative analysis. When hemp producers and processors go to a bank, there are no models and there is no institutional memory, so to speak. That is because it has been illegal to grow hemp in Canada for the past 60 years, and now this place has made it legal. It is not the same as walking into the bank and requesting a loan because you have been offered a McDonald's franchise, and that is strike two.

Honourable senators, banks will take risks where the return is potentially high. Banks look for 40 per cent profit margins within three years for any new innovation. The models that I have seen for hemp production put margins at a healthy 20 per cent, but not at the 40 per cent that the banks want to see. That is strike three against the farmer, and the hemp industry is out.

Venture capitalists traditionally play the role in the economy of providing banking for new economic activity. For them, the risk of losing is outweighed by the opportunity to get in at the ground level of a new industry. Here is a news flash: Venture capitalists do not think about agriculture. They are more interested in the high-tech industry. While the environmental angle has sparked some interest, the dollars just will not flow because the potential reward is not high enough.

There has been some interest by venture capitalists, but the interest is not from Canadians. These deals will lead to a foreign-owned domestic hemp production industry, and no one that I know relishes that thought.

Honourable senators, the solution to this problem is for the government to become involved to provide short-term equity financing to the industry. I am not suggesting that government bear all of the risk, but if it can make a meaningful contribution, other players such as banks and venture capitalists will come on board to kick-start the industry. Unfortunately, the government has yet to come to the table.

•(1540)

Hundreds, perhaps thousands, of hours have been spent by hemp producers and processors, bureaucrats, former senator Eugene Whelan, Senator Tunney, myself, and others, trying to find the government department or program that would make this work.

Officials with the Departments of Agriculture, Industry, International Trade and even Health, along with the Business Development Bank of Canada, have all been asked to provide assistance. Dozens of applications have been made by the industry for funding of one sort or another, and all applications have been turned down. There always seems to be a reason why the hemp industry does not qualify for government programs.

I am not too much into modern music, but to quote Alanis Morissette, it is like having 10,000 spoons when all you need is a knife.

Honourable senators, I would appeal to both the private and public sectors to do what they can to ensure the long-term viability of the industrial hemp industry. I think that banks are missing out on a remarkable opportunity to play a role in the development of an exciting industry. I hope that they will eventually realize that the vast, long-term potential of industrial hemp will outweigh any short-term risks they may take.

Furthermore, the government must realize that the Canadian public has an enormous stake in ensuring that this industry succeeds. The industry will provide a much-needed additional crop for our farmers, a crop that is both low maintenance and profitable. We learned this summer, in some of the arid regions of Ontario where there were drought conditions, that hemp can grow even under such conditions, and it can grow to be six feet high.

There is also the potential for thousands of manufacturing and processing jobs as the market develops.

Honourable senators, as I am sure you can see, the past year has brought the industrial hemp industry to a crossroads. The planning, research, pilot projects, business plans and market development are all now complete. Many companies across the country are ready to make the leap into full production. This industry needs our support. I hope that all of you will join in my call for someone to hand Canada's hemp industry a knife and a fork.

The Hon. the Speaker: As no other honourable senator wishes to participate in the debate, this inquiry is considered debated.

ISSUES IN RURAL CANADA

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Andreychuk calling the attention of the Senate to issues surrounding rural Canada.—(*Honourable Senator Andreychuk*).

Hon. Terry Stratton: Honourable senators, I rise to support the inquiry by my colleague the Honourable Senator Andreychuk, calling the attention of the Senate to issues surrounding rural Canada.

As you are well aware, Canada is undergoing rapid change caused by a wide range of factors. These factors include the changing nature of the economy, the globalization of markets, the rise in prominence of international institutions of governance, the rapid growth of major cities, and the impact of new technologies on both businesses and individuals. These and other factors are profoundly affecting rural citizens and their communities.

Depopulation, the decline of certain resource industries, the persistent, ongoing crisis in agriculture, and the continuing shift of demographic, economic and political weight from rural to urban Canada have raised serious questions about the long-term viability of many rural communities. They have also contributed to a sense of insecurity among rural Canadians. We are faced with difficult questions: How important is it to Canadians to sustain rural communities? How can we be sure that rural interests and issues are properly positioned on the national policy agenda?

At the same time, new opportunities for rural Canada are emerging, especially as new technologies make it possible to overcome geographic barriers to commerce and communication and as rural entrepreneurs attempt to move from a focus on raw commodity production to value-added enterprises.

Indeed, according to government statistics, rural Canada's economy has gradually become more diversified and more like that of urban centres. It is a fact that there are fewer jobs in natural resource industries traditionally associated with rural Canada, such as forestry, fishing and trapping, mining and energy. However, there are now more rural jobs in manufacturing, trade, finance, communication, business, personal services, tourism, transportation and storage. As well, like urban Canada, economic growth in rural Canada is being attributed more and more to telecommunications and information technology.

Yet these developments cannot hide the fact that the picture of rural Canada as it is today is not what it was 20 to 25 years ago. Especially in terms of economic opportunity, rural Canada and rural Canadian communities have much less to offer than they did as recently as the 1970s and early 1980s.

Consider the current context. Rural families have lower average incomes than do urban families. As a result, they pay relatively less tax and receive relatively more government transfers. Rural families get more transfers because unemployment rates are higher and because more pensioners live in rural areas. Federal transfers account for 16 per cent of rural residents' total income, compared to 9 per cent of urban residents' total income.

Statistics also suggest that rural Canadians have a lower level of social well-being than their urban counterparts.

Furthermore, although rural regions of Canada have 31.4 per cent of the country's population, they have only 29 per cent of Canada's employed workforce. In fact, within each age and gender group, rural Canadians are less likely to have a job than are urban Canadians.

If one wanted to go back a bit further than 25 years ago to see how much Canada has changed, consider how things were a century ago when rural Canada formed the backbone of an economy that harvested the riches of the earth.

Small towns, marked by grain elevators, broke up the rolling wheat fields of the Prairies; thriving fishing villages dotted Maritime shores; and mill towns sprang up to house miners and loggers in B.C., Ontario, Quebec and elsewhere. More than two-thirds of Canadians lived outside big cities and towns at the end of the 19th century. Currently, in the year 2001, while the total rural population keeps growing, it accounts for just one in five Canadians.

Although primary industries are still important, the centres of gravity in the Canadian economy have shifted to big cities with thriving high-tech and service sectors, such as Toronto, Vancouver and Calgary.

Increasingly automated, resource production and agriculture do not need as many strong backs. The jobs that one tied families to small-town Canada are drying up.

As a result, and also because of other factors, young people in rural Canada have left their rural areas to go to the big city in search of education and opportunities that are not available in their home places. Subsequently, small towns shrivel.

To appreciate where we are today and how that situation has come to be, we must understand where we have come from as a country with respect to rural Canada. For instance, from Confederation on, government policies aimed at strengthening east-west links played a big role in determining immigration and settlement patterns. These policies, by and large, benefited rural Canada. However, in the changed economy of current times, governments have far less power to influence how societies develop.

Does this mean that some small towns are destined to die? Does this mean that rural Canada will become increasingly marginalized in terms of Canada's public policy agenda? I hope not.

However, I do think it is important to get a better handle on what it is that makes successful rural economies and communities tick, in the year 2001, to see what we should be focusing on when it comes to discussing the plight of that region. For instance, consider the cases of Steinbach, Manitoba, and of Humboldt, Saskatchewan. Although faced with declining income and economic activity from agri-business, they have successfully morphed into centres for small manufacturing companies.

•(1550)

Elliot Lake in Northern Ontario is also an example worth pondering. It was once the uranium capital of the world but, unfortunately, it has been devastated by the closing of the uranium mines. The closures and mass layoffs were first announced in 1990 and continued until June 1996.

Elliot Lake, with a population of 14,500, saw the loss of more than 3,000 jobs. Although the transition has been difficult, and Elliot Lake has not really recovered to its level of economic health from before the closures, this town currently has new business activity in telecoms, light industry, waste management and environmental services, tourism and retirement living services.

Merritt, British Columbia, with a population of 8,200, is also a town that has seemed to be particularly resilient against the trends of rural depopulation. Thanks to a highway built through the Cascade Mountains in the mid-1980s and to some forward-thinking local leadership, Merritt seems destined to dodge the fate of many Canadian small towns.

I raise these instances of rural communities that have made transitions in changing times for a reason. Simply put, when the federal government considers its policies that affect rural Canada, it would be useful if it focused its analytical perspectives

and resources on discovering why some communities thrive in the face of change and crisis and why others do not. Why is it that some rural communities build on a sense of local boosterism and entrepreneurial spirit to successfully challenge the trends of rural depopulation, and others fail to do so?

I feel that by taking this approach of focusing on the circumstances that the communities themselves have faced, we as legislators, and government itself, would be engaging in a more proactive, as opposed to reactive, discussion on the issues facing Canada's rural communities. Rather than focus on these issues from a remote perspective of what this government program or that government program has done, or is designed to do, our analytical lens should be reoriented to view things from the perspective of the rural communities and areas themselves.

In this regard, organizations such as the Canadian Association of Single Industry Towns have come up with some interesting findings and research. In 1991, this association published a study of eight Canadian small towns that were in crisis and that appeared to resist a reactive approach by designing and implementing a long-term strategic approach to sustainable economic development.

In examining these eight small towns, the association summarized 10 factors that were critical to the achievements of these towns. I would now like to summarize these factors, because they represent some important food for thought with respect to the inquiry that Senator Andreychuk is proposing.

First, the development efforts in these communities were sustained over many years, often 10, 15, 25 or 30 years. Second, the association found that there was either a crisis or a major concern that motivated the local leaders to act in these communities. Third, each community began the process of renewal by investing its own money in the initiatives that it undertook.

Fourth, the study found that a regional approach involving neighbouring communities was beneficial. Fifth, in all of the communities studied there was one dynamic leader, usually the mayor, driving the process. Sixth, local leaders realized that if anything was to happen, they would have to do it themselves. They were able to mobilize the community to support them.

Seventh, the association found that a development organization of some sort was created in each of these communities. Eighth, both short-term and long-term plans were implemented. Ninth, the association found that government incentives were not the motivating factor driving the efforts of these communities. Generally, these communities had a plan in place before looking for government assistance. Tenth, and last, the development of small local businesses was the key factor. The communities in the study were forced to rebuild investor confidence and entrepreneurial spirit to accomplish sustainable economic development.

I cite these factors because, if we are to engage in a serious discussion about the plight of rural communities and areas, we must be more sensitized to what it takes from the perspective of rural Canadian communities to adapt to change. By focusing on some examples where there has been a degree of success in implementing sustainable economic transition strategies, perhaps the federal government can properly optimize the role that there is for it to play.

Increasingly, because of the trends driving rural depopulation, rural Canadians are being asked to do more with less in terms of economic and social resources. That does not mean that they should be content to have less. We have a role and a responsibility to examine and consider ways for rural Canadians to achieve the same economic success and prosperity that has become available to many of their counterparts in urban Canada. If, in the process, we learn more about rural Canada, and decision makers and governments are able to do the same, then we would be doing something that is very useful.

On motion of Senator Andreychuk, debate adjourned.

QUESTION OF PRIVILEGE

Hon. Anne C. Cools: Honourable senators, I rise, as I had indicated earlier in my notice, on a question of privilege. Honourable senators should have the notice in their hands, so I think they are informed. Since the question revolves largely around words stated by Senator Mobina Jaffer here in the Senate on November 22, 2001, I want to make it crystal clear that I intend to be very sensitive to the fact that Senator Jaffer is very new in this place and not conversant with or knowledgeable of parliamentary process and parliamentary procedure. It is my intention to show due deference to that fact. Before I even begin to raise my question of privilege, I want to be clear that my intention in raising this question is not to impugn Senator Jaffer in any form or fashion but rather to facilitate a correction of the record, which I think could solve the problem and settle the issue.

Having said that, perhaps I could begin by stating what happened. Last Thursday, November 22, under Senators' Statements, Senator Mobina Jaffer rose to make a statement. I believe her intention was to inform the Senate of a terrible murder that had taken place in Vancouver. Perhaps, honourable senators, I could begin there so that we are crystal clear that my remarks today in no way underestimate the enormity of such a tragedy.

•(1600)

One of the reasons why I think Senator Jaffer's words in the Senate were ill-considered and ill-spoken is that murder is unspeakable. I know of no senator who would support murder or who would want to be associated in any form or fashion with even appearing to condone a murder. Perhaps I should begin by putting on the record a passage from the famous 17th century author John Donne in his masterpiece of literature that we all

know so well and from which the famous words "for whom the bell tolls" and "no man is an island" have been taken.

I believe Mr. Donne called it a meditation. He wrote:

No man is an island, entire of itself; every man is a piece of the continent, a part of the main.

He continued:

...any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bell tolls; it tolls for thee.

I think we can truly say, honourable senators, that those words speak for most of us here. I think I can truly say that those words speak for most Canadians because it becomes very important for us to admit again and again that we all share a common and collective humanity, and that any man's death diminishes us all.

Having said that, it is pretty clear that the terrible murder of a homosexual man, whose name was Mr. Aaron Webster, in an area of Vancouver's Stanley Park frequented by homosexual men, is a tragedy which causes us all pause.

My concern here is that in her remarks, Senator Jaffer attempted to tie such a murder to a Senate debate on my Bill S-9, being an act to remove certain doubts regarding the meaning of marriage. I would say that her attempt to connect those events is irrational, unreasonable and unjustifiable.

I would add that those statements, which seemingly associate the Senate and senators with any form of hatred or violent crime, in particular murder, are repugnant. I would also add that I sincerely believe that such sensationalism is unworthy and that there is no connection between that murder and the law of marriage.

Honourable senators, to further clarify the point, perhaps we can look to our rules, specifically rule 22(4). That rule spells out pretty clearly the criteria for Senators' Statements. In part, the rule states:

...Senators' Statements should relate to matters which are of public consequence and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate. In making such statements, a Senator shall not anticipate consideration of any Order of the Day and shall be bound by the usual rules governing the propriety of debate. Matters raised during this period shall not be subject to debate.

I think that rule is pretty clear. In other words, the statements made under Senators' Statements should not anticipate matters that are on the Orders of the Day, such as my Bill S-9, and should be governed by propriety. Matters raised during that period shall not be subject to debate. Many of the points that Senator Jaffer made are definitely subject to debate and, in particular, very subject and relevant to the question of debate on Bill S-9.

To bring that forward a little more clearly, perhaps we should look to the record of last Thursday to see what was actually said that is undesirable and repugnant.

The first thing that one sees as recorded at page 1757 of the *Debates of the Senate* of last Thursday is the heading concerning Senator Jaffer's statement. The heading is, "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage." That heading is extremely offensive and very demeaning to senators and to the Senate. Perhaps I should repeat the heading. It is not the text or the substance of what Senator Jaffer said. It is the heading which I believe is applied in the process of printing the debates. The heading is, "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage."

The mere appearance and mention of that bill in this dubious way proves the point and need for rule 22(4). I think rule 22(4) was intended, especially, to avoid this sort of thing.

I will read briefly a few of Senator Jaffer's statements. I say again that I am sensitive and aware that she is very new to this place and is not conversant with the process or the mechanisms here. In part, she stated:

Honourable senators, I was dumbfounded yesterday when this chamber debated a bill to deny marriage to homosexuals.

First, that is not the case at all. The bill is declaratory of the law as it currently stands, the very same law that the Minister of Justice and the Government of Canada are upholding.

Her next statement which I wish to read is as follows:

When honourable senators rise in this house to speak in favour of Bill S-9, I remind them that they are giving comfort to those who hate.

I will repeat that. She said:

When honourable senators rise in this house to speak in favour of Bill S-9, I remind them that they are giving comfort to those who hate.

The senator has drawn an association between Bill S-9 and hatred. Not only that, she has said that any senator who rises to speak or has risen to speak has given comfort to hate.

Those are the statements that I consider quite repugnant. There is no evidence put forward for any of this, but this assertion, this connection, this linkage, this tie, is being made.

She continued:

They are also teaching that intolerance of homosexuals is both proper and righteous.

That, again, is extremely objectionable and repugnant. I am grossly shocked and repulsed by it. As a matter of fact, these kinds of statements jolt sensibilities in very profound ways.

She continues with another statement, the meaning of which I did not understand. She said:

Honourable senators, to use religion to justify intolerance is cowardly. It is an attempt to use faith to mask hatred.

I did not really understand if she was talking about Senator Banks or me. I was not too sure, as it made no sense.

I will move to the next statement wherein she quoted the words of Reverend Martin Niemöller in 1945 Nazi Germany. It is a very famous quotation which reads as follows:

First they came for the communists, and I didn't speak up — because I wasn't a communist. Then they came for the Jews, and I didn't speak up, because I wasn't a Jew.

The quotation is a very famous one. It continues with this statement which is especially obnoxious. To compare a bill or any senators in this chamber to that state of Nazism or that state of fascism is, quite frankly, ridiculous. Finally, at the end of her statement, she said:

Honourable senators, we have an obligation and a duty as members of the Senate of Canada to bring honour to this institution. Honour is brought by demonstrations of tolerance.

•(1610)

There is something very wrong with Senator Jaffer even mildly suggesting that a debate on Bill S-9 brings dishonour to an institution, particularly this institution. I hope that I have, for the sake of the record, laid out some of the offending statements. I sincerely believe that those statements are problematic. However, I should be asking the Senate to take no action because it seems to me that the matter is quite easily resolved.

Those particular statements contained in her Senator's Statement last Thursday gave birth to a small plethora of newspaper articles. I have in my hands three such articles, and I propose to read the headlines from them. Senators, of course, can look this up if they want.

The first one is from the *Ottawa Citizen* of November 23, the next day. The headline is: "Bill to 'define' gay marriages intolerant, senator says." The first line of the article reads as follows:

B.C. Liberal Mobina Jaffer denounced Senate colleagues yesterday for encouraging the kind of intolerance she believes led to the slaying of a gay man in Vancouver on Saturday.

Honourable senators, the reason I raised this matter is because in our wildest imaginations and in our worst moments of rhetoric, we should never, ever attempt to associate anything a senator says here with anything as terrible as that kind of tragedy and that kind of murder.

The second line of that particular article continued:

Ms. Jaffer said she was dumbfounded by a speech by Liberal Senator Tommy Banks of Alberta, who spoke Wednesday in support of a bill aimed at finding a term other than "marriage" to describe a homosexual union.

First of all, the bill does not do anything like that, but that is beside the point. The fact of the matter is that she was dumbfounded that Liberal Senator Tommy Banks spoke in favour of Bill S-9.

The second newspaper article is the from *The Vancouver Sun*, and the headline is similar, though not the same: "Jaffer blasts senator for remarks on gays." This particular article is definitely pointed, again, at Senator Tommy Banks, because I can assure honourable senators that nothing in Bill C-9 says anything whatsoever about gay people for that matter. That article led off saying the same thing:

B.C. Liberal Mobina Jaffer denounced Senate colleagues Thursday for encouraging the kind of intolerance she believes led to the murder of a gay man in Vancouver...

The final article is from *The Edmonton Journal*, again of the same date, November 23. The headline is even more poignant, probably because it is the hometown of Senator Banks: "Alta. senator criticized for stand on gay bill: Banks' comments support intolerance, Senate colleague says."

In the interest of keeping the record straight, I should also mention for the record that it would seem that many people in Senator Banks' hometown came to his defence. It appears that on November 26 and November 24, respectively, the *Edmonton Journal* published an editorial and a letter in support of Senator Banks.

Perhaps I can put on the record first the editorial from *The Edmonton Journal* of November 26, 2001. The headline is "Rhetoric unfair on marriage bill." The first line of the article supports Senator Banks, saying:

Alberta Senator Tommy Banks has made a noble speech in respect of homosexual relationships — and then received shockingly unfair criticism from British Columbia Senator Mobina Jaffer.

The article goes on to present a robust upholding of Senator Banks.

Then *The Edmonton Journal* of November 24, 2001, published a letter from someone called Harlan Green, and the headline was "Banks has reputation for tolerance, fairness." The letter said the following:

As if Sen. Tommy Banks hasn't had enough personal tragedy in his life lately, it is unfathomable that his Senate

colleague, B.C. Liberal Mobina Jaffer, should criticize him so unjustly.

The weight of press opinion, at least in Edmonton, seems to be with Senator Banks.

What I propose to do, honourable senators, is to say that I am satisfied that Senator Jaffer intended nothing malevolent. I am satisfied that she intended nothing cruel, and I am satisfied that her statements may be a misspeak.

I have observed that Senator Jaffer is not here.

His Honour's role in a question of privilege such as this is to make a ruling as to whether there is a prima facie case to allow a motion to be made. To be crystal clear, I ask His Honour to make no judgment on Senator Jaffer herself in respect of breach of privilege because I think we should be kind to new senators. However, I would ask him to adjudicate a very narrow point. That narrow point is on the heading that appears in the *Debates of the Senate*, which I shall read again, if necessary. The heading of the debate is as follows: "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage."

I propose to ask His Honour to rule that there is a prima facie case in respect of that heading. The motion that I would propose to move right now would be for an amendment to the record to change that heading to more accurately reflect what I believe Senator Jaffer set out to do in the first place, which was to call the attention of the Senate to a very horrible and brutal slaying.

Having said that, I can put the motion forth so that we can discuss it. I am not moving it formally, just referring to it for the sake of debate so that members of the Senate can be crystal clear as to what it is I am requesting. I would be asking His Honour to find that this particular heading is undesirable and offensive to us. The proposed motion is as follows:

That the *Debates of the Senate* of November 22, 2001, be amended and corrected at page 1757 in the heading under Senators' Statements, "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage," by replacing it with a more accurate heading, being "Informing the Senate of the Tragic Murder of a Homosexual Man in Vancouver's Stanley Park," and also that other related and corollary Senate records, including the debates of the Senate Internet version, be also amended and corrected in this manner.

•(1620)

As His Honour and honourable senators can see very quickly, what is being asked for is really quite small and quite insignificant. I have said here that I think we should treat the situation with Senator Jaffer as a misspeak and allow me to move a motion that has the effect, if debated and carried, of amending the heading to be consonant with rule 22(4), which is that nothing should be debated there that anticipates an Order of the Day.

I hope that I have been clear, honourable senators. If I have not been clear, I would be happy to answer questions. I do believe that there is no one in this chamber who would support intolerance or violence of any kind.

The Hon. the Speaker: Do any other senators wish to participate in the debate on Senator Cools' question of privilege?

Hon. Laurier L. LaPierre: I have a question because of ignorance. Is the heading entitled "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage" Senator Jaffer's exact words or an editorial heading?

Senator Cools: It is an editorial heading. That is why I feel I can take the liberty to bring forth my suggestion as a remedy. I would never propose to change a senator's words. These are not her words. It should be very clear that the heading of which I speak is not Senator Jaffer's words. They are the words that would have been applied in the process of editing and preparing the *Debates of the Senate* and in preparing the record. It is very straightforward. It is my view that the heading is inappropriate, and that is why we should change it.

Senator LaPierre is raising this issue in consideration of other questions that we have talked about, and I think it would be very inappropriate to change the record or delete the record or even propose anything so Draconian. The record stays. It is intact. Her words stay there. I just want to see that the heading cleaned up to reflect the reality.

Honourable senators, rule 44(1), which governs this *prima facie* case I am putting before the Senate, says clearly:

When a *prima facie* case of privilege has been established, the Senator who raised the matter may move a motion calling upon the Senate either to take action on the matter or to refer the matter to the Standing Committee on Privileges Standing Rules and Orders for investigation and report.

I do not want to move a motion to refer anything to a committee at all. The motion that I want to move is quite straightforward, because I believe that the action that I am proposing in this motion is essentially just to clean the record so that the record can be more reflective of the dignity and the decorum of the Senate. I hope that I have made it clear. That is what I am proposing.

On a couple of minor points, because I do not want to transform this —

The Hon. the Speaker: Before the Honourable Senator Cools carries on, I wish to draw to the attention of honourable senators, paraphrasing from *House of Commons Procedure and Practice* by Marleau and Monpetit, that when a member is recognized on a question of privilege, he or she is expected to be brief and concise in explaining the event that has given rise to the question of privilege. There may be other senators wishing to speak, and I should like to hear them. I would remind all honourable senators

that that is the rule that I suggest we should observe in this chamber.

Senator Cools: Yes. What I was saying, in the interests of providing greater clarity, still in response to Senator LaPierre, is that the heading is quite offensive to the Senate and should definitely be corrected or amended. I am asking His Honour to rule that the heading is undesirable and not in harmony with the dignity of the Senate, and then I want to put a motion to correct that.

I do not want us to move into a debate here on Bill S-9 because that is the strategic mistake that it would seem that Senator Jaffer made. However, for those who do not know what Bill S-9 is, Bill S-9 is simply a proposal that is declaratory of the law as it is, that goes to the clarity of the law as we have passed it here in the Senate.

The Hon. the Speaker: Honourable senators, I think Senator Cools is quite right that the matter of what Bill S-9 is or is not should be left to that order on our Order Paper, as she has so capably said, and that is where we should debate that matter. This is an opportunity for senators to give the Chair assistance in determining whether a *prima facie* case of breach of privilege has been made. I would ask that honourable senators confine their remarks to that question, remembering the admonition of the text that we be brief and concise in making the explanation for our positions.

Senator Cools: Brevity comes naturally to me. I was only responding to those aspects of what Senator Jaffer said in respect of her remarks. I am not proposing a debate on Bill S-9 because if she had wanted to speak on Bill S-9, that is exactly what she should have done. She should have risen to speak on Bill S-9.

In terms of putting before senators the situation as it was and to clarify for senators what was actually said, in the text of what Senator Jaffer said, it becomes crystal clear that she is not informed either of what Bill S-9 is or of previous actions that this Senate chamber has taken on related issues. Twice in the past year, this Senate has passed bills, being the Modernization of Benefits and Obligations Act, Bill C-23, and also in April last, the Federal Law-Civil Law Harmonization Act, No. 1, which in federal statute says that marriage is between a man and a woman. That is all I was saying. Her comments did not seem to comprehend or to take cognizance of that.

In any event, the real issue is that I should like that heading cleaned up. Since I am not the author of those remarks, I cannot rise on the floor of the chamber and ask for a correction. That is why I have to do it by way of a question of privilege. If I had given those remarks, then I could easily just rise and say, "I want a correction," or something to that effect.

Having said that, honourable senators, I suggest that the matter is really quite simple, and that His Honour could rule now so that I can move a motion right now to have the record cleaned up. It seems to me that the longer the record stays that way, the worse the situation becomes.

●(1630)

[Translation]

The Hon. the Speaker: Do any other honourable senators wish to comment on this matter of breach of privilege as raised by Senator Cools?

If not, I will advise the chamber that, in the absence of Senator Jaffer and her opportunity to respond, I do not believe I can deal with this matter now. I have received advice that Senator Jaffer is expected later this week and, accordingly, if the honourable senator wishes, I will hear her remarks on Senator Cools' comments at that time.

Senator Cools: Honourable senators, I am quite sympathetic to that. Perhaps we could better have proceeded by my asking for your agreement to bring this matter forward tomorrow, but this is one of those situations where senators are pinched by the rules in that the rule specifies that a senator must raise the matter at the earliest opportunity. Therefore, if I were to raise the matter tomorrow, I would run into difficulty. I would have been happy to wait until tomorrow.

As well, I am not too sure what rules His Honour is relying on to take the adjournment.

The Hon. the Speaker: I am not taking the adjournment, honourable senators. I am relying on our rule 18(3), which states:

When the Speaker has been asked to decide any question of privilege or point of order he or she shall determine when sufficient argument has been adduced to decide the matter, whereupon the Speaker shall so indicate to the Senate, and continue with the item of business which had been interrupted or proceed to the next item of business, as the case may be.

The Honourable Senator Cools has asked for her question of privilege to be decided in the absence of the honourable senator whose comments give rise to the question of privilege. I have said, and I repeat, I believe it is proper and in order for me to say to honourable senators that I will have heard adequate remarks when I have given Honourable Senator Jaffer an opportunity to be heard on the question of privilege.

Hon. Senators: Hear, hear!

ROLE OF CULTURE IN CANADA

INQUIRY—DEBATE ADJOURNED

Hon. Jean-Robert Gauthier rose pursuant to notice of Wednesday, September 19, 2001:

That he will call the attention of the Senate to the important role of culture in Canada and the image that we project abroad.

He said: Honourable senators, the purpose of this inquiry is to propose a debate on the important role of culture in Canada and the image that we project abroad. This issue has always been a big passion of mine. It brings back a few memories dating to 1994, when a House and Senate standing joint committee examined Canada's foreign policy and decided to include a chapter on culture. Never before had the issue of culture been included in such a report.

Today, I do not want to take the Senate's time to discuss this issue, which is of great interest to me. I simply want to begin the debate by saying that I asked the Library of Parliament to provide me with the charts that it has updated. In 1994, the Library helped us determine the impact of culture on exports and imports, and its general effects on Canadians. Since 1994, cultural exports — films, music and other cultural tools — have increased by 10 per cent every year, just for material needs.

In initiating this debate, I would invite senators interested in this issue to ask the Library for a copy of the document that it prepared and which is entitled "Promouvoir le rayonnement de la culture et du savoir canadiens à l'étranger." The author is Alain Guimont, Political and Social Affairs Division.

Honourable senators, I received that 15-page document yesterday. I would like to examine it more closely and talk about it at another time.

On motion of Senator Gauthier, debate adjourned.

The Senate adjourned until Wednesday, November 28, 2001, at 1:30 p.m.

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Wednesday, November 28, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Wednesday, November 28, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

NATIONAL AIDS AWARENESS WEEK

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, this week is National AIDS Awareness Week. As we all know, AIDS stands for acquired immune deficiency syndrome, a syndrome that was originally identified in 1981 in the United States.

Thanks to an intensive public health education initiative around the world, we are now aware that AIDS is the result of the compromise of the immune system by the human immunodeficiency virus, HIV. While many of us, especially in the developed world, are aware of the methods of transmission of HIV, it is estimated that there are 36 million people infected with the virus today, 25 million of them living in Africa alone. By the year 2005, estimates are that it will cost U.S. \$25 billion to contain the HIV/AIDS epidemic.

[Translation]

Unfortunately, the vast majority of infected people, as much as 90 per cent, are in developing countries, where access to drugs, information on the disease and means of prevention are limited, if not totally non-existent.

Drugs to keep the virus under control were discovered in 1996, but by far the majority of people with HIV have not been able to benefit from this medical breakthrough.

[English]

However, there are signs of hope and much progress has been made on a global scale. At a meeting of the United Nations a few months ago, many large multinational companies pledged their financial support to combatting AIDS within their own companies and communities. At the 2001 Summit of the G8, Canada played a key role in creating a global AIDS and health fund. Canada has committed \$150 million to this program and our government has provided the necessary leadership to establish a focus group on Africa.

Stephen Lewis, former Canadian Ambassador to the United Nations, has been appointed Secretary General/Special Envoy for AIDS in Africa because of his unique qualifications and

knowledge in addressing this issue. The World Bank and the International Monetary Fund are involved in this initiative and will coordinate the distribution of funds and ensure they are directed to regions that are most affected by the virus. Although we do not yet have a cure for AIDS, we can be proud that Canada has been in the forefront of establishing an effective response to this health crisis.

I hope that all of us can take heart in Mr. Lewis's comments in June of this year when he stated that, together with many others, he feels "a cautious but insistent sense of hope that if a breakthrough is to be made, then this is the moment in time."

REFORM OF THE HOUSE OF LORDS

Hon. Lois M. Wilson: Honourable senators, there came into my hands last week a document from the U.K. called "The House of Lords: Completing the Reform." Senators will remember that reform of the House of Lords in the U.K. began two years ago with the removal of the rights of hereditary peers to an automatic seat in Parliament. At the same time, the government established a royal commission which has now recommended a fully reformed upper house. I found some of the recommendations very creative and concluded that Mother England is about to leapfrog over the Canadian Senate. Let me speak of only a few of the most interesting and provocative changes that are suggested.

The functions of both Houses remain the same, but there is a recommendation that the composition of the upper house be changed to enable it to fulfil its distinctive function. The report rejects the idea of an elected second chamber and instead opts for an equality of numbers to the elected and to independently appointed persons.

The upper house would be representative of the country as a whole, broadly representative of the main parties' relative voting strength as reflected in the previous general election. The new appointment system would reach out to those from a wider range of backgrounds and would control the political makeup of the upper house more equitably. The regions would all have a guaranteed place while there would be an appointments commission to see that women, ethnic minorities and faith communities are also properly represented. There would be a significant minority — 20 per cent — of independent members selected who have no commitments for any particular party affiliation but are selected to bring to Parliament the expertise or experience that they have garnered as leaders in a wide range of national endeavours. Such experience cannot replace a direct electoral mandate, but makes a valuable addition to the expertise of Parliament as a whole, the report states.

•(1340)

It goes on to say that no one party should be able to dominate the upper chamber by voting power alone. The government's proposals for balance between the politically affiliated members and retention of a further independent element mean that future governments, of whatever persuasion, will not be able to force through their programs by voting power in the upper house.

A radical change in the way the composition of the upper house is determined is to recommend that appointments be made not by the Prime Minister but through the establishment of a statutory appointments commission accountable to Parliament alone. The length of term for members would be for a Parliament or for a certain number of parliamentary cycles up to 5, 10 or 15 years, although the government thinks that 15 years is an extremely long time. The report says that the only other Western second chamber with a large component of life members is the Canadian Senate, with its retirement age of 75, which in practice limits the terms of members to an inflexible degree that the U.K. government would not wish to impose on a reformed upper house.

I commend this to the house for serious study. To access it, honourable senators may phone the Library of Parliament.

[Translation]

THE DEPORTATION OF ACADIANS

Hon. Gerald J. Comeau: Honourable senators, yesterday the members of the House of Commons voted on a motion to recognize the harm done to the Acadians by the 1755-1763 deportation.

This resolution was rejected by a vote of 182 to 59. Unfortunately, all of the Acadians in the party in power voted against it. It is true that it was introduced by a member of the Bloc Québécois, a separatist, and I realize that this is a thorn in the side of federalist MPs. Yet the outcome has been that a chamber of Parliament now has on its record that it has refused to recognize the mistreatment of the Acadians in the 18th century. The sponsor of the motion ought to have been aware of the harm a rejection would bring, and if he was really dedicated to the cause of the Acadians, should have withdrawn the motion instead of seeing it negated. I thank all members of the House of Commons who voted in favour.

[English]

RETURN OF LEADER OF THE GOVERNMENT

Hon. J. Michael Forrestall: Honourable senators, I am glad to see that the Leader of the Government is back in her seat today.

ROUTINE PROCEEDINGS

CANADA NATIONAL MARINE CONSERVATION AREAS BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-10, respecting the national marine conservation areas of Canada.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Banks, bill placed on the Orders of the Day for second reading two days hence.

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Leonard J. Gustafson: Honourable senators, I give notice that on Thursday, November 29, 2001, I will move:

That the Standing Senate Committee on Agriculture and Forestry have the power to sit on Wednesday, December 5, 2001, at 3:30 p.m. to hear from the Minister of International Trade, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

OFFICIAL REPORT

NOTICE OF MOTION TO REPLACE HEADING "INFLUENCE ON HATE CRIMES OF BILL TO REMOVE CERTAIN DOUBTS REGARDING THE MEANING OF MARRIAGE"

Hon. Anne C. Cools: Honourable senators, pursuant to rules 56(1) and 58(1)(i), I hereby give notice that I shall move:

That the *Debates of the Senate* of Thursday, November 22, 2001, in Senators' Statements, at page 1757, in the heading "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage" be corrected by replacing that heading with a more accurate heading, being "Informing the Senate of the Tragic Murder of a Homosexual Man in Vancouver's Stanley Park," and also that all other corollary Senate records, including the *Debates of the Senate* Internet version, be also corrected in this manner because:

(a) it is desirable and honourable that Senators during Senate debate uphold the principled practice that Senators and Senate debate ought not be linked to any murder or violent anti-social behaviour; and because

(b) it is desirable and honourable that there be no attempt to connect a terrible and tragic murder to a Senate debate or to any Senator's participation in a Senate debate because such connection is offensive to the extreme; and because

(c) it is desirable and honourable that for the proper functioning of the proceedings under Senators' Statements that all Senators uphold Rule 22(4) of the *Rules of the Senate* which states in part:

In particular, Senators' statements should relate to matters which are of public consequence and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate. In making such statements, a Senator shall not anticipate consideration of any Order of the Day and shall be bound by the usual rules governing the propriety of debate; and because

(d) it is desirable and honourable that all honourable senators uphold the high standard of virtue that as Canadians we all share a common and collective humanity such that any person's death diminishes us all, for we are all connected.

QUESTION PERIOD

TRANSPORT

PROPOSED EXEMPTION TO FIREARMS ACT TO ALLOW UNITED STATES AIR MARSHALS TO CARRY WEAPONS IN CANADA

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, my question arises from a statement made last week my Senator Finestone when she was introducing Bill C-38, to amend the Air Canada Public Participation Act. In her formal presentation, which is reprinted in *Debates of the Senate* of November 22, on page 1765, she said, in referring to the government:

It has also made the necessary provisions to allow armed U.S. air marshals on U.S. flights to enter Canada without difficulty.

During the pre-study on Bill C-36, the committee was told that one of the clauses in the bill is an amendment to the Firearms Act, which would allow exemptions regarding the carrying of firearms, including those carried by sky marshals. In other words, if the bill is passed as such, the government would allow an exemption to the Firearms Act to a number of those who carry firearms, including those who are known as sky marshals, coming from abroad and landing in Canada.

From what authority did the government derive allowing sky marshals on U.S. flights to enter Canada when the parliamentary authority has yet to be given?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, since this is a confusing issue, I hope that I am given the opportunity to be fulsome in my reply because I think it is critical.

The authority is an indirect one and differs as to whether it is a Canadian plane going from Canada outside of the country or whether it is an American plane coming to Canada. For example, the Canadian Aviation Security Regulations presently in place under already passed legislation provide that certain individuals — police, for example — may carry weapons on airplanes generally for escort purposes.

•(1350)

The Aeronautics Act also allows exemptions to regulations to be made by the minister under section 5.9(2). Prior to September 11, such an exemption was made by the RCMP officers on Air Canada flights to the Ronald Reagan National Airport in Washington.

Bill C-36, and only Bill C-36, would authorize an American air marshal to come to Canada with weapons.

Senator Lynch-Staunton: Honourable senators, I will have to read what the minister has just said. I am somewhat confused. The minister's last statement was that Bill C-36 would allow armed U.S. sky marshals to come into Canada. Senator Finestone has told us that that is already happening.

Senator Finestone: That was a mistake.

Senator Lynch-Staunton: If the senator was improperly informed, then I would like someone to deny the fact that armed U.S. air marshals are coming into Canada under a provision of Bill C-36 that has yet to be approved by Parliament.

Senator Prud'homme: Shame!

Senator Carstairs: I think I can give the honourable senator that clarification. Bill C-36 allows U.S. officers, with weapons, to come into Canada. My understanding is that U.S. officers are not coming into Canada armed at the present time. However, should we pass Bill C-36, they will have that authority.

With respect to armed RCMP officers going into the Reagan airport, because flights were not allowed to land at Reagan airport unless armed marshals were on board, that authority is derived from two areas: the Canadian Aviation Security Regulations and the Aeronautics Act.

Senator Lynch-Staunton: In the last two cases, the question would be: Do American authorities allow armed Canadian air marshals to arrive at American airports? However, that is a totally different question.

Honourable Senator Finestone read a speech that obviously was approved by the department that is sponsoring this bill. The minister has contradicted that statement. The government is in contradiction with itself. This chamber needs to know who is right. Is it the department that is proposing the bill that Senator Finestone has sponsored and whose words she read, or the minister here, who says, "No, there are no armed U.S. sky marshals landing in Canada at this time, and none will until Bill C-36 is passed, unchanged, as we have it before the House of Commons now."

Senator Carstairs: Honourable senators, I can only assure you that following the interchange between the Honourable Senator Finestone and honourable senators in the chamber last week, particularly with Senator Lynch-Staunton, I asked for clarification on the matter, and it is that clarification from which I read today, to provide honourable senators with the most up-to-date information.

EFFECT OF DISCHARGING FIREARM ON AIRPLANE IN FLIGHT

Hon. Noël Kinsella (Deputy Leader of the Opposition): Honourable senators, could the minister inform this house whether Canadian authorities have done any testing to ascertain the effect of discharging a firearm at 33,000 feet that would penetrate the skin of a large aircraft under air pressure?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know of any specific testing, but I will inquire and return with that information.

CARRIAGE OF FIREARMS BY AIR MARSHALS ON FLIGHTS ORIGINATING IN FOREIGN COUNTRIES

Hon. Marcel Prud'homme: Would the minister deny today that no foreign airline is authorized to be in our Canadian airport with arms?

Hon. Sharon Carstairs (Leader of the Government): I am sorry, but I cannot give the honourable senator that particular answer with respect to any foreign airline. I was given the information vis-à-vis the United States and the sky marshal situation. Rather than go out onto dangerous ground, I would much rather obtain that information and report back to honourable senators.

Senator Prud'homme: To help out the honourable senator in her reflection and search, would she report back to us, in particular, how long El Al Israel Airlines has been authorized to have armed guards in our Canadian airports?

Senator Forrestall: Since 1936.

Senator Carstairs: I will add that question to the more general question that the honourable senator first asked.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— CHANGES TO STATEMENT OF REQUIREMENTS— IMPACT ON COMPANIES COMPETING FOR CONTRACT

Hon. J. Michael Forrestall: Honourable senators, I have a question concerning process as well.

Why is the government changing the basic vehicle requirement specifications for the proposed Maritime helicopter now from revision No. 4 to revision No. 5 when already we have heard the military complaining that Sea Kings may have to fly until 2015?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the answer that I have for the honourable senator is one that he has been afforded on other occasions, but I am more than willing to repeat it this afternoon: There are no changes being made to the statement of requirement for the new Maritime helicopters. There are some changes to the more detailed technical specifications, but they are based on military analysis, extensive statistical research and realistic force planning scenarios. The SOR has not been changed.

Senator Forrestall: The minister has said to me on many occasions that we have a clear difference of opinion. I always thought that since we learned to read and write in the same province, we understood that words had to have the same meaning.

Has the government considered the fact, and a fact it is, that it will likely face at least two lawsuits when it emerges that they have rightly or wrongly favoured one firm over another in this process by issuing a new basic vehicle requirement spec and as a result of the impact of further delays in acquiring a Sea King replacement?

Senator Carstairs: Honourable senators, I thank the honourable senator for that question. Indeed, the honourable senator and I were educated within the same province. Just for the honourable senator's information, on Saturday, in Halifax, I went to visit some of the nuns who taught me at the Convent of the Sacred Heart, in order to pay my respects for their wonderful education and certainly their clear instruction in developing my ability to read.

As to the honourable senator's specific question, there may indeed be lawsuits that are generated from those companies that lose this bid. This is probably one of the most significant bids on military equipment for many years to come. Not only will these helicopters be chosen by Canada, there is a good chance they will then be chosen by a great many of our NATO allies. Within the debate and discussion of the purchase of helicopters, this is a very big deal.

One cannot anticipate whether there will be lawsuits at any time. However, one is realistic enough to realize that, given the hype and publicity that the bidders have been entering into over the last several years, a lawsuit would not be a great surprise.

SEA KING HELICOPTERS—PROGRAMS FOR
EXTENSION OF LIFE OF AIRCRAFT

Hon. J. Michael Forrestall: I am glad to see that the minister is at least beginning to recognize that there is worldwide interest in what is happening here and what is happening with the development of replacement helicopters for seaborne operation. I wish to point out to the minister that that has been a viable understanding and awareness for some 15 or 20 years on the part of those who follow the issue reasonably closely or who have responsibility for this file.

Has the government contracted with Industrial Marine Products, in Halifax — perhaps the best maintainer of Sea Kings in the world — to study support issues for the life extension of the Sea Kings past 2005?

● (1400)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator says that I am just beginning to realize the helicopter issue. How could anyone sit in this chamber day after day and not be aware of the helicopter issue?

Honourable senators, at the end of the last session I asked my staff to count the number of questions I had been asked by the Honourable Senator Forrestall on this very important point. I understand he asked 155 questions. Having been a teacher for 20 years, I certainly know that 155 questions — albeit not from a student but someone on the other side — makes it a significant issue. I have been aware of the issue for some time.

With respect to the specific question about whether a contract has been let, I do not have the answer. I will seek that information and report back as soon as possible.

Senator Forrestall: Honourable senators, what concrete steps is the government taking now with regard to the \$50 million annually that have already been put into upgrades and the millions of dollars that we spend in maintenance to extend the life of the Sea King to 2005? What new programs does the government have to maintain the Sea King until at least 2010 or possibly 2015?

I can tell honourable senators that I monitor the Web site, and from that, I get the clear message that the government does not care.

What programs are there in place to keep the Sea Kings alive? What modifications and updates have been made? Even the

master mechanics at IMP are not infallible. This machine is wearing out. How will we keep it afloat for another 10 years?

Senator Carstairs: Let us be realistic, honourable senators. Senator Forrestall is well aware of the \$50 million that has been spent to upgrade the Sea Kings. In fact, I think he himself made the statement — although it may have been Senator Graham — that probably the only original part is the identification number of the Sea King, that nearly everything else has been changed.

It must be made clear that it is still the government's desire to take delivery of the first maritime helicopter by December 2005. Clearly, if that happens — as we certainly hope it will — some of the Sea Kings will need to remain operational past 2005. A study done by DND engineering in 1994 concluded that by undertaking a number of modifications the Sea King could be extended to 2010. That is why the decision was made to spend the \$50 million on the upgrades. Most of the recommended modifications have now been completed.

CANADIAN INTERNATIONAL DEVELOPMENT
AGENCY

EFFECT OF SETTLEMENT OF LAWSUIT BY EMPLOYEE ON FUTURE
HIRING OF VISIBLE MINORITIES

Hon. Donald H. Oliver: Honourable senators, my question is directed to the Leader of the Government in the Senate. It relates to the settlement of a lawsuit against CIDA. Canadians were shocked to learn last week that CIDA, the multibillion dollar Canadian government agency, reached an out-of-court settlement with Ranjit Perera of Sri Lanka. The case arose out of charges of discrimination on grounds of racism against Blacks and visible minorities in that agency.

The minister will know that Justice James Hugessen of the Federal Court of Canada granted an order whereby Mr. Perera will receive a cash settlement, a letter of regret signed by CIDA President Len Good, \$185,000 in court costs and an increase of \$35,000 a year in his salary.

Does this government plan to monitor CIDA in order to restore the confidence of Mr. Perera and other Canadians that this government agency will diversify its managerial positions and hire more visible minorities?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is clear from its policy that the Government of Canada is extremely concerned about the employment of members of visible minorities and others that we have specifically targeted, such as Aboriginal people, who are highly underrepresented in our public service, and the handicapped, who are to an ever greater degree disadvantaged within our public service. The government is monitoring all those efforts, not only for employability but also for promotion and growth within the employment opportunities afforded them.

Senator Oliver: Honourable senators, my question was specifically about CIDA. It has been long recognized that there has been latent racism in CIDA for many years. This particular case took more than 10 years to be resolved and the resolution of it resulted in a substantial settlement, which is a clear indication that there was racism against visible minorities in that department.

Specifically what will the government do to ensure that the insidious and still present problem in CIDA will be monitored and resolved?

Senator Carstairs: Honourable senators, I deeply regret it if the problem does still exist. I will express clearly to the minister that it is the view of the Honourable Senator Oliver that the problem still exists and that extra special attention should be brought to the CIDA organization.

[Translation]

OFFICIAL LANGUAGES

AID FOR LINGUISTIC MINORITIES

Hon. Jean-Robert Gauthier: Honourable senators, my question is for the Leader of the Government in the Senate. The French-language media have talked a lot recently about the latest study commissioned by the Commissioner of Official Languages, Dyane Adam, entitled "The Governance of Canada's Official Language Minorities: A Preliminary Study." The study is critical of government funding for linguistic minorities.

To quote the researchers, Linda Cardinal and Marie-Ève Hudon, of the University of Ottawa:

Since the data show that the government's new procedures were primarily a way of having the decrease in public funding managed by others...

The approximate cost for the fiscal year ending on March 31, 2000 — without taking inflation into account — is practically the same as it was 23 years ago, on March 31, 1978. The federal government invests less than 0.5 per cent of federal spending annually in official languages. In terms of Canada's population, this represents approximately \$17 per capita. This is a very modest expenditure to maintain linguistic duality.

Could the minister tell us if she will be taking the appropriate steps to make her colleagues in cabinet aware of the urgent need for a change in direction and in the attitude of the government toward official language communities?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. It is an important one that highlights the commitment

that the government made in its last Speech from the Throne strongly affirming its commitment to Canada's linguistic duality, which is at the very heart of Canadian identity and which constitutes a key element of our vibrant society. That is also why the Honourable Stéphane Dion has been appointed to form special relationships with other ministers in order to demonstrate that commitment. He is working closely with the Honourable Sheila Copps to develop an action plan to enhance government actions. We anticipate that a proposed action plan will be received in cabinet very soon.

[Translation]

Senator Gauthier: Language rights are exercised according to their objectives, and the courts have been saying so for the past several years. The fact of the matter is that without financial means it is impossible to advance the cause of language rights in Canada. Money must be invested in official languages, and support given to official language communities living in a minority situation. Could the minister advocate for the minorities with the Minister of Finance so he will provide financial resources to the official language communities in his December 10 budget?

[English]

Senator Carstairs: Honourable senators, I am more than pleased to advocate on behalf of minority language and the need for services, as the honourable senator knows full well.

•(1410)

In Western Canada, the most vibrant example of a francophone community is within the city of Winnipeg: the active community of St. Boniface. The preservation of their language in all of its fullness is an important cause for me. I can assure the honourable senator that it will be part of my lobbying efforts to the Minister of Finance.

[Translation]

Senator Gauthier: The minister responsible for the coordination of official languages programs, Stéphane Dion, was appointed eight months ago. Approximately three months ago, before a parliamentary committee, he promised an action plan. Could the minister ask him when we can expect this action plan, on which he has been working for the past eight months, so that we can have an idea of where we are going?

[English]

Senator Carstairs: Honourable senators, I wish to tell the Honourable Senator Gauthier that it is my understanding, in looking at documents to which I am privy, that that action plan will be presented to cabinet very shortly.

Senator Prud'homme: Good.

HEALTH

STATUS OF LEGISLATION TO ADDRESS HUMAN TISSUE AND STEM CELL RESEARCH

Hon. Wilbert J. Keon: Honourable senators, I have a question for the Leader of the Government in the Senate. Recent attention to cloning of human embryos has stimulated new interest on the entire subject of the use of human tissues and stem cells for research. It has been eight years since the Baird Commission on New Reproductive Technologies submitted its two-volume report calling for urgent measures to be taken by the federal government. In addition, the Canadian Institutes of Health Research is working on recommendations and guidelines for stem cell research and related work.

It is my impression that there is quite good legislation in preparation to deal with this entire subject. Could the Leader of the Government please tell me, first, at what stage this legislation is, and, second, what measures are being taken to bring it forward for parliamentary consideration and debate?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his very important question. We have become very aware this week of how quickly technology is advancing in this field.

Canada's draft legislation is ready. It is presently before the Standing Committee on Health in the other place. I must tell honourable senators that this is a battle I lost. I actually wanted it to come to this house because I thought we had the knowledge and expertise here to deal with it, but the decision was that it would be sent to the Health Committee instead of to our Standing Senate Committee on Social Affairs, Science and Technology. However, I was assured we would be given ample time to study it when it came back in formal legislation.

The draft legislation is available. If the honourable senator does not have it, I will certainly make it available to him.

FOREIGN AFFAIRS

UNITED STATES—GOVERNMENT POLICY ON ENLARGEMENT OF CURRENT CAMPAIGN IN AFGHANISTAN TO INCLUDE IRAQ

Hon. Douglas Roche: Honourable senators, I have a question for the Leader of the Government in the Senate. On Monday, U.S. President Bush warned Saddam Hussein that if he did not admit United Nations inspectors to determine if Iraq is developing nuclear, chemical or biological weapons, he would face the consequences.

Given that Canada also wants assurance that Iraq is not developing weapons of mass destruction, what is the policy of the Government of Canada on the enlargement of the present war against the Taliban in Afghanistan in the name of stamping out terrorism? Would Canada remain a part of the U.S.-led coalition if it enlarges the bombing campaign to include Iraq?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Prime Minister has been very clear that the enlargement of any present campaign to Iraq would have to be based on proof that, in fact, Iraq was engaged in the terrorist activities that we all know took place on September 11.

GOVERNMENT POLICY ON FOSTERING DIALOGUE ON TERRORISM WITH CERTAIN COUNTRIES

Hon. Douglas Roche: Several days ago, the United Nations Humanitarian Coordinator for Iraq, Mr. Hans von Sponeck, was in Ottawa discussing these issues. Among other things, he encouraged the Government of Canada to engage in and enlarge the dialogue with Iraq and specifically to encourage King Abdullah and Mr. Amr Moussa of the Arab League to more aggressively pursue the role of negotiators between Kuwait, Saudi Arabia and Iraq.

What is the Canadian government's position in respect of fostering international dialogue that could, at this stage, head off military action later on?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, obviously the Government of Canada is not opposed to dialogue, particularly dialogue that might prevent future hostilities. That is something to which the Government of Canada has always been committed.

It is important to bear in mind that Canada has supported the United Nations sanctions as the best way to achieve our disarmament objectives in Iraq. That commitment has not changed.

THE SENATE

TABLING OF REGULATIONS TO ACCOMPANY BILL TO AMEND INTERNATIONAL BOUNDARY WATERS TREATY ACT

Hon. Pat Carney: Honourable senators, my question is addressed to the Leader of the Government in the Senate. Last night, in the Foreign Affairs Committee, the Minister of Foreign Affairs told us that because of the importance of the regulatory provisions of Bill C-6, he had ensured that the draft regulations were tabled with the committees in advance of the adoption of the bill so that members of the committee could see what was anticipated and what the government was intending to do.

In fact, to my knowledge, the draft regulations have not been tabled in the Senate. They were not with the bill when we received it. Will the minister ensure that the regulations that the minister referred to are in fact, tabled in accordance with the rules?

Senator Corbin: They are in the briefing notes.

Senator Carney: They may be in the briefing notes, but they were not tabled in the Senate.

Hon. Sharon Carstairs (Leader of the Government):

Honourable senators, the honourable minister indicated that the draft regulations had been provided to committee members. Briefing books are given to the members of each committee. The information, therefore, is accessible by senators who were engaged in the detailed study of the bill.

However, if the honourable senator wishes the draft regulations to be distributed to all senators, and they are available in both official languages, then I would undertake to do that by tomorrow.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable Senators, I have the honour to table in this House a response to a question raised in the Senate on November 8, 2001, by Senator Kinsella regarding the list of terrorists and terrorist groups.

INTELLIGENCE AND SECURITY**LIST OF TERRORISTS AND TERRORIST GROUPS**

(Response to question raised by Hon. Noël A. Kinsella on November 8, 2001)

The *United Nations Suppression of Terrorism Regulations* implement key measures contained in a resolution adopted by the United Nations Security Council on September 28, 2001.

The regulations establish a list of persons or groups for which there are reasonable grounds to believe they have committed, attempted to commit or participated in a terrorist act or facilitated the commission of a terrorist act.

The list includes names identified by the United Nations Security Council Committee Concerning Afghanistan, as well as names identified by the government as being associated with terrorist activity.

No person in Canada or Canadian outside of Canada will be permitted to knowingly deal directly or indirectly with any assets owned or controlled by a listed person; or provide or collect funds for the use of listed persons.

There are 315 listed persons under the *United Nations Suppression of Terrorism Regulations*.

It should be noted that this list is fluid as names are being added by the United Nations Security Council Committee Concerning Afghanistan (automatic incorporation) and through regulatory amendment.

•(1420)

ORDERS OF THE DAY**TRANSPORTATION APPEAL TRIBUNAL
OF CANADA BILL****THIRD READING**

Hon. Aurélien Gill moved the third reading of Bill C-34, to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts.

He said: Honourable senators, I am pleased to address, at third reading, Bill C-34, to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other acts.

•(1420)

This bill was closely scrutinized by the honourable senators sitting on the Standing Committee on Transport and Communications. The committee considered the bill in a thorough and in-depth manner. I want to thank committee members who gave their input and support to this bill, as demonstrated by the questions asked during consideration of the bill.

[English]

Members met with officials of Transport Canada as well as key transportation representatives from the private sector.

[Translation]

One of the main commitments made by this government is to rethink the role of the state in the transportation sector. This means modernizing the federal legislation on transport and reviewing the way we administer and enforce our laws in the interests of Canadians.

As mentioned by Transport Canada officials, extensive consultations were carried out across the country at the end of 1997 and at the beginning of 1998 in the marine and railway sectors to modernize the legislation governing them.

The discussion papers resulting from these consultations all support the creation of an independent review body with expertise in the transportation sector. Establishing this tribunal would be an integral part of legislative reform in the transportation sector. This is achieved in two ways with Bill C-34. First, it provides for review of the use of administrative enforcement measures by an expert body completely separate from the department. Second, the legislation promotes consistent government treatment of persons engaged in federally regulated transportation activities in the rail, marine and airline sectors.

I cannot emphasize strongly enough that this bill is mainly about reviewing administrative enforcement measures, which are very different from judicial enforcement measures. Judicial measures are taken in the case of much more serious regulatory violations requiring criminal proceedings and possible criminal sanctions. Here, we are talking about prison sentences and fines of hundreds of thousands, even millions, of dollars. Administrative measures have to do with the concept of natural justice and procedural fairness. This means that someone against whom an administrative measure is going to be taken has the right to know the grounds for the decision, that they have recourse, if they wish, and that they have the right for this review to be held before an independent third party.

[English]

I believe that Bill C-34 would establish a review mechanism characterized by the following key underlying principles: independence, expertise, fairness, expediency, informality, accessibility and economy.

[Translation]

Bill C-34 has two key components. First, the establishment of the transportation appeal tribunal of Canada and, second, the outlining of the tribunal's jurisdiction and decision-making authority by amending six pieces of transportation legislation: the Aeronautics Act, the Railway Safety Act, the Canada Shipping Act, the Canada Transportation Act, the Marine Transportation Security Act and Bill C-14, the Canada Shipping Act, 2001.

The establishment of this new improved tribunal involves the transformation of the existing Civil Aviation Tribunal into a multi-modal transportation tribunal giving the rail, marine and aviation sectors access to an independent review body. This bill deals with the machinery aspects of establishing this tribunal such as membership appointments, duties and qualifications and the review and appeal hearing process. It also includes transitional housekeeping provisions to ensure that the work of the Civil Aviation Tribunal continues smoothly into the new body.

With respect to the tribunal's independence, after carefully examining the bill and hearing the testimony of the chairperson of the current tribunal, I believe that this important principle has been maintained and strengthened. The transportation appeal tribunal of Canada would thus provide an independent recourse mechanism for many cases where right now there is no review mechanism other than that within Transport Canada.

As for the expertise of the members appointed to this tribunal, I agree with my colleagues that this is crucial to the tribunal's credibility.

The legislation makes relevant transportation expertise a mandatory criteria. This would involve separate rosters of

part-time rail, marine and civil aviation members. Within each roster there would be a wide variety of expertise: commercial, mechanical, legal and medical, to name a few. This means that a review hearing dealing with a rail matter would be heard by a member with rail expertise, a medical issue would be heard by a member with medical expertise, and so on. This tribunal would not only have an impressive array of relevant transportation expertise, but I will take the liberty of adding, honourable senators, it would come at an impressively low cost. The roster of part-time members would be paid only when hearing a case.

[English]

The jurisdiction of the tribunal, in terms of the types of administrative enforcement decisions it could review, is set out in the amendments to the six transportation acts that I mentioned previously.

[Translation]

The tribunal would be able to review six different types of administrative enforcement decisions found in varying degrees in the six pieces of transportation legislation, including administrative monetary penalties, refusals to remove enforcement notations, railway orders, a variety of licensing decisions, notices of default in relation to assurances of compliance, and decisions surrounding screening officer designations.

There was a very thorough examination of the powers of the tribunal. Overall, the powers of the Transport Appeal Tribunal of Canada would depend on the nature of the administrative enforcement decision being reviewed. Where the enforcement action is substantially punitive in nature, the tribunal would be able to substitute its decision for that of the department. For example, a review of an administrative monetary penalty. However, where the enforcement action has more to do with competencies and qualifications to hold licences, public interest or other safety considerations, the tribunal would generally be authorized only to confirm the department's decision or refer the matter back for reconsideration.

It is not the intent of the legislation to dilute the fundamental safety and security responsibilities of the Minister of Transport under the various transportation acts. I am sure that the Transport Appeal Tribunal of Canada could provide an efficient and effective review. I am confident that it could benefit from the same levels of support as are currently available to the Civil Aviation Tribunal. I encourage all honourable senators to support Bill C-34.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

•(1430)

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

The Hon. Fernand Robichaud (Deputy Leader of the Government) moved the third reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other acts.

On motion of Senator Oliver, debate adjourned.

[English]

AIR CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Milne, for the second reading of Bill C-38, to amend the Air Canada Public Participation Act.

Hon. David Tkachuk: Honourable senators, it is my pleasure today to respond to the motion for the second reading of Bill C-38.

Last week, I listened with interest to Senator Finestone's speech on second reading, as well as to the questions asked of her afterward. I think that, inadvertently, she may have answered the most salient question posed by the Honourable Senator Murray at the end of her speech. Senator Murray asked:

Honourable senators, will Senator Finestone tell us whether this is the sum total of the government's policy in terms of restoring or creating a competitive air industry in Canada?

Senator Murray knows how to get to the heart of the matter.

Not to be outdone, Senator Finestone, perhaps anticipating Senator Murray's question, said at the beginning of her speech:

The bill does not try to solve any of the longer-term issues relating to Air Canada.

Like most of the government's legislation, this bill solves no one's problem. Rather, it is simply part of the government's never-ending smokescreen which attempts to leave the impression that the government is trying to fix a problem, a problem of its own making.

When I inquired during Question Period about the role of the government in the problems of the air industry in Canada, Senator Carstairs said that it was bizarre thinking on my part; and

that the Government of Canada had little to do with Air Canada's problems and that, rather, they were the result of failing economic conditions and the events of September 11. She inferred that it had more to do with privatization than the policy of this Liberal government.

The bill has a few intentions, as explained to us by Senator Finestone, one of which is to remove the 15 per cent limit for a single shareholder. Another is to remove the resulting sections put in place to enforce that restriction; and another has to do with certain amendments to the Firearms Act. The government did not use this opportunity to raise foreign ownership from 25 per cent to 49 per cent, which I am sure it will do at a future time when, again, it will be too little too late.

The bill is being rushed through both Houses. "Government by executive order," I call it, leaving parliamentarians to act as rubber stamps. I asked my friend Senator Oliver, who is the Deputy Chair of the Standing Senate Committee on Transport and Communications, to ensure that Minister Collenette appears before the committee before they do any work on the bill.

This bill only returns that part of the corporate policy to normal. Getting rid of the whole act is what we should be considering, not this piecemeal approach. That might be too much to expect, however, because to do that the government would actually have to think through its air transportation policy. Members of Parliament could use this bill as an opportunity to debate our air transportation policy and to try to articulate some kind of air policy that would provide long-term direction to the carriers and to the country.

Both Senator Finestone and Minister Collenette in the other place used the word "integration" to describe the previous attempts to merge the two airlines, that is, Canadian Airlines and Air Canada, which, I might add, was a deliberate policy of this Liberal government. The way they put it in their speeches, it was as if it were just some small act that took place a couple of years ago and, "Gee whiz, now we have all these problems."

We have in the Senate the Honourable Ross Fitzpatrick who was on the board of directors of Canadian Airlines at that time, along with a former employee in the Prime Minister's Office, Jean Carle of Apex Security fame. I am sure both these men could shed some light on the problems facing the air industry in Canada today.

As board members, they might also enlighten us as to why they think Minister Collenette and Onex were in lockstep. Onex was seemingly prepared to launch a takeover of both airlines, something a company usually takes a long time to prepare. Yet it is important to remember that Onex was not in the airline industry. Thus, they would not have had to announce their intention, unless they had already acquired the requisite number of shares, something which securities legislation forces them to announce. That means they would have been acquiring shares of both airlines for some time prior to the announcement by Minister Collenette to suspend the application of the Competition Act as it applied to airlines in Canada.

If honourable senators remember correctly, when the minister lifted the application of the act, Onex obviously had the required number of shares to continue. Thereafter, they had to make an announcement that they were taking over both airlines, which leaves me a bit suspicious.

Normally, companies do not reveal their takeover intentions until they have purchased, as discreetly as possible, a certain number of shares, in order to prevent them from paying a high over the market price for those shares. Perhaps it is possible that I am wrong and Onex announced its intentions out of the goodness of its heart as good Canadians to save Canadian Airlines. Perhaps that is what they did.

I will now go through the relevant history that has led us to the present situation. In September 1999, the Quebec Superior Court declared Onex's proposal against the law. As a result, Onex withdrew its proposal. In October 1999, Minister Collenette tabled the policy framework for airline restructuring in Canada that retained a 25 per cent foreign content rule. By this time, the Canadian airline industry was reeling from the new merger policy rules and the minister's actions with respect to mergers.

Seeing the significance of the minister's actions, the Competition Bureau recommended allowing foreign carriers into Canada. Shortly thereafter, Air Canada, a little concerned about this proposal, commenced a counter bid to take over Canadian Airlines. This action was driven by the government's inability to state a coherent policy. No one had a clue as to what was going on. No one in the airline industry knew what was going on. Likewise, neither Parliament nor the Canadian people knew what was going on.

In December 1999, both Houses of Parliament reported on the examination of airline restructuring. The House recommended that foreign ownership be raised to 49 per cent and that individual ownership be raised to 15 per cent of the shares of an airline. The Senate Transport Committee also recommended 49 per cent for foreign ownership and 20 per cent for individuals. The government did not see fit to legislate either of the recommendations of both Houses of Parliament.

Instead, they moved the limit to 15 per cent in June 2000, well after Air Canada had taken over a debt-ridden company that someone else could have got for nothing or, at the very least, at a deeply discounted price after its bankruptcy. That is what should have happened to Canadian Airlines. It was an airline that had been saved from bankruptcy once. Through its meddling, the government was attempting to do it again.

• (344)

By July of 2000, Air Canada reported a loss of \$221 million and prepared its workforce for job cuts and reduced hours. The government, being Liberal and still believing jobs could be legislated, burdened Air Canada with all kinds of obligations that, in the end, made life even more difficult for the company

and absolutely horrendous for the paying public. By their actions, the government created chaos in the industry and infected the healthy carrier with the debts of the sick carrier, leaving the predator as sick as the victim. They just could not leave well enough alone because at heart they do not believe in the market or its forces. The rest of the history on how we got to this point is equally traumatizing, for it shows how little in the way of policy has been articulated.

I understand even now that another new bill is being put forward, another small step without anyone knowing the big picture. I predict there will be a number of reactive bills rather than the positive regulatory and policy framework that all airlines would be thankful for in this country.

What is the purpose of the 25 per cent rule for foreign investment? It is a political purpose. Foreign investment could easily be at 49 per cent. Travellers want competitive and reliable service to travel or to ship goods and rarely check on the ownership or share structure of a particular airline. The Dutch national carrier, KLM from the Netherlands, which everyone thinks is the Dutch national carrier, is not owned only by Dutch shareholders, but they are not in a majority position. Truth be told, Americans own the largest number of shares in KLM. Yet it operates as their national carrier with a brand name that gives it an enviable position in the marketplace. That is what Air Canada has — a brand name that is very powerful and that the government should be using rather than hurting.

Do we really need this bill at all and have different rules for headquarters and for bilingualism? Air Canada is a bilingual airline. Why are all the other airlines not bilingual airlines? They are not. Only Air Canada is a bilingual airline. Either they are all bilingual airlines or none of them should be bilingual airlines. Air Canada is mandated to have its headquarters in Montreal, and there is nothing wrong with that, but why should any company be forced to have its headquarters in a particular place? That is a decision for the company to make and not for legislators to make.

Air Canada is, in fact, burdened with a regulatory framework that is more burdensome than when it was a Crown corporation. It is time to change all that. Let the carriers be in the business of air travel. Let us treat them all equally. Let us examine the regulatory framework on a consultative basis. Let us, the government, be in the business of providing a regulatory framework that works for consumers and business. Let us stop tinkering around the edges and confusing the airline business community. Let us put in place a competition policy that provides real competition in which the public and the airline industry have confidence. Let us not be a party to the present policy that is overseeing the demise of a once proud industry.

Honourable senators, our party supports this bill but urges the government to present an airline industry bill that would deal with the myriad of issues that continue to plague our industry.

Hon. Tommy Banks: Honourable senators, would the Honourable Senator Tkachuk entertain a question?

Senator Tkachuk: Sure.

Senator Banks: The honourable senator referred to competition a moment ago. Would that be foreign competition?

Senator Tkachuk: It could be foreign competition.

The Hon. the Speaker: Honourable senators, before recognizing Senator Finestone, I wish to inform all honourable senators that if Senator Finestone speaks now, her speech will have the effect of closing the debate on the motion for second reading of this bill.

Hon. Sheila Finestone: Honourable senators, I have a question with respect to the interest that our colleague has demonstrated in putting forward some interesting thoughts. Is the honourable senator hopeful that the Department of Communications will read his suggestions and perhaps take some incentive from what he has put forward?

In the meantime, I want to make one observation or comment. There seems to have been some confusion about my original remarks. I should like to bring to the attention of honourable senators, in particular the Honourable Senator John Lynch-Staunton, the observations that I did make in the speech that I presented here when I introduced the bill in this chamber. That is found on page 1765 of the Thursday, November 22, 2001 *Debates of the Senate*, where I brought to the attention of this house that in order to re-establish Air Canada's important flying rights into the Ronald Reagan National Airport, a unique geographic location, the government had authorized the presence of armed RCMP officers on Air Canada flights to the United States capital. As I said at that time:

It has also made the necessary provisions to allow armed U.S. marshals on U.S. flights to enter Canada without difficulty.

Perhaps I should have added that these provisions are found in Bill C-36 and are not in effect as yet. We are waiting for the authority to be granted, and we are not anticipating the decisions of Parliament prior to Bill C-36 being passed. I think that honourable senators know that we worked hard on Bill C-36 and that we are anxious to see what kind of changes are made.

Senator Tkachuk: I promise to bring that to the attention of Senator John Lynch-Staunton.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Finestone, bill referred to the Standing Senate Committee on Transport and Communications.

[Translation]

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption of the Tenth Report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, with amendments) presented in the Senate on November 8, 2001.

Hon. Pierre Claude Nolin: Honourable senators, I rise today to speak during consideration of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs on the Youth Criminal Justice Act. I should like to mention right away that I will be voting in support of the report, and I invite you to vote with me.

That being said, I will divide my time into two sections. First, I will attempt to explain briefly the amendment proposed by the committee for clause 110 of Bill C-7, regarding the publication of the identity of a young offender.

Then, I will deal with the issue of the importance of the role of this chamber in the consideration and adoption of legislation that will have a significant impact on the respect of the rights, needs and greater interests of millions of young Canadians. Let us proceed with the amendment proposed for clause 110 of Bill C-7.

Honourable senators, for several years, debate surrounding the publication of the identity of young offenders has dealt with legitimate but contradictory values, which are the very foundation of the youth criminal justice system.

•(1450)

On the one hand, there is recognition of the importance of encouraging the rehabilitation of a young offender by avoiding the potentially negative impact of publishing details about his case or his identity. On the other hand, it is also realized that greater openness and transparency on the part of youth courts increases the trust of the public and victims in an open and responsible justice system separate from that for adults.

Right now, the provisions of the Young Offenders Act with respect to the privacy of young offenders strike a certain balance between these two values. Section 38 of the act prohibits the publication of information serving to identify a young offender. Certain exceptions apply, however. For instance, section 38.(1.5) provides that an attorney general, a Crown attorney, or even a peace officer may request that a youth court make an order permitting the applicant to identify a young offender, having regard to the following three factors: the young person has been found guilty of an offence involving serious personal injury, the young person poses a risk of serious harm to society, or the publication of his identity is relevant to the avoidance of that risk. In these three instances, the burden of proving the need to publish the identity of the young person falls to the Crown. In addition, if a young offender is sent to an adult court for trial, the protection offered by section 38 no longer applies and the young person's identity will therefore be published. This is the system under the current Young Offenders Act.

Honourable senators, Bill C-7 significantly changes the mechanism I have just described, that found in section 38 of the Young Offenders Act. It is an amendment that will have a negative impact on many adolescents, and here is why.

Subclause 110.(1) of this legislation maintains the ban on publishing the name of a young person or any other information related to a young person. However, subclause 110.(2) provides that this does not apply in the case of a young person who has received an adult sentence, a youth sentence for murder, aggravated sexual assault, manslaughter, or a youth sentence for a serious violent offence or an adult sentence after three serious violent offences. This will ring a bell for those who are watching the American legal scene. If a young person is covered by the four categories I have just mentioned, his identity is automatically published as is currently the case in the adult penal system. Is this an improvement over the current provisions of the law? Personally — and this is shared by the majority of the members of your committee — I do not think so. It is certainly no improvement over existing provisions. This is why we have decided to amend the bill.

Honourable senators, my concerns in this regard do not relate to the publication of the identity of the young offenders in the four cases set out in article 110. As I showed earlier, section 38 of the Young Offenders Act already provides for this. However, Bill C-7 no longer assigns the prosecutor the burden of proving that publication would benefit society. There is a significant difference involved.

Honourable senators, this amendment worries me greatly, for two reasons. First, a provision whereby there is automatic disclosure of the identity of a young offender runs counter to the preamble of this very same bill, Bill C-7. It also contradicts the principles of rehabilitation and reintegration, as well as the existence of a distinct criminal justice system for youth, one that

is different from the adult system as set out in clause 3 of this same legislation.

This is even more worrisome when one considers that a young offender could be sentenced as an adult at as early an age as 14 years. As Justice Binnie of the Supreme Court pointed out less than one year ago, in paragraph 14 of the *Queen v. F.N.* ruling, and I quote:

Stigmatization or premature 'labelling' of a young offender still in his or her formative years is well understood as a problem in the juvenile justice system. A young person once stigmatized as a lawbreaker may, unless given help and redirection, render the stigma a self-fulfilling prophecy. In the long run, society is best protected by preventing recurrence.

In the case at hand, it seems clear that the principle of the protection of society in the short term takes precedence over the principles of rehabilitation and reintegration. However, if clause 110.(2) is passed with the current wording, Bill C-7 will seriously jeopardize the chances for the rehabilitation and reintegration of adolescents, which will not ensure the protection of society in the long term.

Second, several witnesses who appeared before the Standing Senate Committee on Legal and Constitutional Affairs were concerned that clause 110.2(2) of Bill C-7 might not comply with Canada's international obligations on young people's privacy. Indeed, Article 40 of the United Nations Convention on the Rights of the Child provides that, in order to promote the reintegration of a young person who is accused or found guilty of a criminal offence, state parties must ensure that his privacy is fully respected at all stages of the proceedings. Similarly, Rule 8 of the United Nations Minimum Rules for the Administration of Juvenile Justice, commonly known as the Beijing Rules, provides, and I quote:

No information that may lead to the identification of a juvenile offender shall be published.

These rules, which were adopted by the UN General Assembly in 1985, establish the minimum criteria, the threshold for the administration of justice for youth. According to a witness heard by the committee, Jean Trépanier, who is a well-known criminologist at the University of Montreal, the provisions of Bill C-7 on the publication of the identity of young offenders could pose a problem, considering Canada's international obligations. In the evidence he gave before the committee on October 31, he said:

The possibility of publishing names in such cases is, in fact, contrary to the spirit of these rules.

He was referring to the rules that I just mentioned. A little further in his testimony, he said:

In general, I think that the spirit of these UN instruments is much closer to the general spirit of the Young Offenders Act than to the bill, which is closer to traditional criminal law.

• (1500)

A brief from the Commission des droits de la personne et des droits de la jeunesse du Québec concerning Bill C-7 corroborates Mr. Trépanier's statements. According to the commission:

These increasing exceptions to the principle of confidentiality constitute major deviations from the rules of international law governing the treatment of minors in conflict with the law.

Honourable senators, for these two reasons it is therefore necessary to amend clause 110.(2), if only in order to attain the objectives of Bill C-7 and to comply with our international commitments. To that end, the committee report recommends the adoption of an amendment to the effect that the publication ban defined in clause 110.(1) would not apply in the cases set out in clause (2). On request by the Crown, the youth court would judge that the public interest would be better served as a result. Publication of the identity of a young offender would, therefore, no longer be automatic, but at the discretion of the court.

During clause-by-clause consideration, some felt that this was a redundant amendment, because clause 75.(3) of Bill C-7 already gives the court that discretion. I will deal with that objection, if I may. Under this provision, a judge would have the possibility of banning publication, but the burden of requesting this would fall upon the young offender himself or herself.

If we take into account the principles underlying Bill C-7, the provisions of the Canadian Charter of Rights and Freedoms and our international commitments, can we really impose such a reversal in the burden of proof on an adolescent? The amendment proposed in clause 110 re-establishes the scheme currently in effect under the Young Offenders Act and no longer places the burden of proof on young persons.

In addition, as subclause 75.(3) is found in the section of Bill C-7 that concerns adult sentencing, it may not readily be concluded that this judiciary discretion applies as well to adolescents receiving a youth sentence set out in another part of the bill.

Honourable senators, in this context, the amendment proposed in subclause 100.(2) will permit the return of a certain balance between long-term protection of society and a young offender's best chances for rehabilitation.

I would first, briefly — from the heart — like to address the role of this house within Canada's parliamentary system. I hope I will get the attention of those who appear to be listening but are reading and those who are reading and not listening to me.

The Hon. the Speaker *pro tempore*: Honourable senators, the time allotted to Senator Nolin has run out.

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I certainly agree to grant five more minutes to Senator Nolin, but I do not agree to then proceed with questions.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted for Senator Nolin to continue?

Hon. Senators: Agreed.

Senator Nolin: My comments regard the legislative power of the Senate, if we do indeed have one, and the legislative power of committees. I am referring to this famous jewel that we so cherish, this marvellous institution that we promote at every opportunity we have, in front of auditoriums full of students, professors, professionals and Canadians interested in, or curious about, the Canadian parliamentary system and the specific role of our institution.

Allow me to speak about this jewel. Our colleague Senator Pearson made the following heartfelt remarks during the committee deliberations:

[English]

If we amend the bill and it goes to the House of Commons, the whole issue will arise again. Then we will get back into the issue of public opinion. We in the Senate are admirable, but we are not elected. Therefore, while we are responsible for many constituencies of various sorts, which is to both our advantage and disadvantage, it does limit the sense I have at least of being able to do everything we would want.

I do not know whether I expressed that well, but that is my challenge: We can only go so far ahead of where the public is prepared to go.

[Translation]

Honourable senators, I am very concerned by the honest statement made in good faith by Senator Pearson. If she is right, this is a far-reaching issue and it means that, for all intents and purposes, the legislative power of this institution, which is specifically mentioned in the Canadian Constitution, does not exist. It is a masquerade and this is serious. A masquerade almost implies a fraud. Thus, those who knowingly take part in this masquerade — those who are involved in criminal law or who work under the Criminal Code know what it means — do so with malicious intent. The Senate, senators, the government, government ministers and public servants are all knowingly taking part in this masquerade.

What are senators ashamed of? I am not ashamed of anything. I must admit that it is easier to say this when one sits in the opposition. It is harder for the government to make the same statement. This explains Senator Pearson's heartfelt remarks. Some of us are ashamed to admit that we refuse — and I mean it — for partisan reasons, to make an informed and wise use of the independence that we enjoy. Some are ashamed of that. But why be ashamed? No one in the Langevin Building can take that independence away from us. Senators sit in the Senate until age 75. What are they afraid of?

The report that we have before us is the result of a consensus. As a Quebecer, I am pleased with the existing act and so are all the legal stakeholders in my province who deal either directly or indirectly with young offenders. These people told us not to change anything, because the current system works well. If the government wants to make minor changes, fine, but do not touch the system.

I began my examination of this bill with that attitude. After hearing a number of witnesses, I realized that the other Canadian provinces wanted some changes. This report is the result of a consensus.

Honourable senators, I would ask for two additional minutes to complete my remarks.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted for two additional minutes for Senator Nolin?

Hon. Senators: Agreed.

•(1510)

Senator Nolin: The report before the Senate is the product of a consensus and is an attempt to correct certain shortcomings. As a Quebecer, I agreed to take part in this undertaking, which I would almost describe as patching up a bill. An examination of its principles — you will read the report — reveals that they are shaky.

Honourable senators, I will tell you very honestly that I refuse to be a part of this masquerade. We heard from 60 witnesses. Think about it for two minutes. Leaving out the officials and the minister, there were 55 individuals who travelled from Montreal, Toronto and elsewhere. These people, in good faith, appeared before us and asked us to amend the bill. We listened to them. Never were they told that it was highly unlikely that this bill would be amended.

Honourable senators, I am telling you the way I feel today because I am sure that some of you must have felt the same way. You are simply uncomfortable saying so. There is no need to be ashamed! Be real senators! You were certainly not appointed to sit back and not exercise your legislative power. I urge you to exercise that power. There is still time to do something, to offer young Canadians the best of themselves.

On motion of Senator Moore, debate adjourned.

The Senate adjourned until Thursday, November 29, 2001, at 1:30 p.m.

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OFFICIAL REPORT
(HANSARD)

Thursday, November 29, 2001

THE HONOURABLES ROSE-MARIE LOSIER-COOL
SPEAKER *PRO TEMPORE*

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THE SENATE

Thursday, November 29, 2001

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

SENATOR'S STATEMENT

THE HONOURABLE SHEILA FINESTONE, P.C.

CONGRATULATIONS ON TENURE AS CHAIR OF
CANADIAN GROUP OF INTER-PARLIAMENTARY UNION

Hon. Joan Fraser: Honourable senators, as many of you know, a few moments ago Senator Finestone concluded a long and illustrious career as Chair of the Canadian Group of the Inter-Parliamentary Union.

Today, she received a letter from Anders B. Johnsson, the Secretary-General of the Inter-Parliamentary Union. I should like it to be on the Senate record. He writes the following:

I had hoped that the session of the Executive Committee of the IPU in mid-December would have provided an opportunity for the members of the Committee and my colleagues to bid you farewell as you leave Parliament after a long and distinguished career. Recent circumstances have, however, dictated otherwise and I am therefore sending you this message.

It has been a particular pleasure to work closely with you as a member of the IPU Executive Committee. Many of your colleagues would wish to join me in expressing appreciation of your clear-sighted guidance at a time when the Union is facing new and particularly demanding challenges.

More generally, under your dynamic leadership, the Canadian Delegation to the IPU has developed a very high profile. With the particular flair you demonstrated from the very start in mastering the IPU's arcane procedures and practices, you were quickly recognised as one of the Union's most prominent and influential figures. The organization owes you a debt of gratitude for all you have done to promote the causes it espouses.

[Translation]

You have every right to be proud of your remarkable contribution to the rise of the organization. During the 1980s, you were a driving force behind the action of the IPU in promoting equality and partnership between men and

women. You were one of the principle architects of the structures put in place at the time to ensure long-term action in this area. Your drive behind the setting up and organization of the meeting of parliamentary women and its coordinating committee was vital. I add my voice to that of the many parliamentary women who have paid homage in Ouagadougou to your exceptional career...

Within Canada as within the IPU, you have always promoted the fight on behalf of the most vulnerable. You led the way by encouraging the IPU to make parliamentarians aware of the dangers of the mines and the need to eliminate them... Many people and organizations, including the IPU, will continue to want to draw on your experience and talent. I hope we will be able to turn to you in the future.

[English]

On a more personal note, I will certainly miss your uncanny knack of always calling a spade a spade. You never shy away from difficult issues and you speak your mind in a most refreshing manner. Just one more reason to be grateful for all you have done for the IPU!

ROUTINE PROCEEDINGS

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—REGULATIONS TABLED

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I wish to table the international boundary water regulations, which were in draft form and presented to all members of the committee studying Bill C-6, but at the request of Senator Carney, she wanted it tabled in the chamber. I want to make it clear that the minister in his statements did not say that they had been tabled in the Senate chamber. However, I am quite pleased to do so this afternoon.

CHAIRMAN OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

POSITION OF ETHICS COUNSELLOR ON POSSIBLE CONFLICT OF
INTEREST IN STUDY ON STATE OF HEALTH CARE SYSTEM TABLED

Hon. Michael Kirby: Honourable senators, I have had translated the letter from the Ethics Counsellor that in my Senator's Statement of Tuesday, I said I would table in the Senate once it was available in both official languages. With leave of the Senate, I should like to table it now.

The Hon. the Speaker pro tempore: Is leave granted, honourable senators?

Hon. Senators: Agreed.

REVIEW OF REFERENDUM REGULATION PROPOSED BY CHIEF ELECTORAL OFFICER

REPORT OF LEGAL AND
CONSTITUTIONAL AFFAIRS COMMITTEE TABLED

Hon. Lorna Milne: Honourable senators, I have the honour to table the eleventh report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with the proposed referendum regulations adapting the Canada Elections Act for the purpose of a referendum.

ABORIGINAL PEOPLES

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Thelma J. Chalifoux, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Thursday, November 29, 2001

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

FIFTH REPORT

Your Committee, which was authorized by the Senate on Thursday, September 27, 2001, to examine and report upon issues affecting urban Aboriginal youth in Canada. In particular, the Committee shall be authorized to examine access, provision and delivery of services; policy and jurisdictional issues; employment and education; access to economic opportunities; youth participation and empowerment; and other related matters; and to present its final report no later than June 28, 2002, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

THELMA J. CHALIFOUX
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "A", p. 1036.)

The Hon. the Speaker pro tempore: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Chalifoux, report placed on Orders of the Day for consideration at the next sitting of the Senate.

• (1340)

NATIONAL SECURITY AND DEFENCE

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Colin Kenny, Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Thursday, November 29, 2001

The Standing Senate Committee on National Security and Defence has the honour to present its

THIRD REPORT

Your Committee was authorized by the Senate on May 31, 2001, to conduct an introductory survey of the major security and defence issues facing Canada with a view to preparing a detailed work plan for future comprehensive studies.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of June 7, 2001. On June 11, 2001, the Senate approved the release of \$100,500 to the Committee and on November 6, 2001 the Senate approved the release of \$95,500 to the Committee.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

COLIN KENNY
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "B", p. 1042.)

The Hon. the Speaker pro tempore: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kenny, report placed on Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

ILLEGAL DRUGS

BUDGET—REPORT OF SPECIAL COMMITTEE PRESENTED

Hon. Pierre Claude Nolin, Chair of the Special Committee on Illegal Drugs, presented the following report:

Thursday, November 29, 2001

The Special Committee on Illegal Drugs has the honour to present its

THIRD REPORT

Your Committee was authorized by the Senate on March 15, 2001, to reassess Canada's anti-drug legislation and policies.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of May 10, 2001. On May 16, 2001, the Senate approved the release of \$98,500 to the Committee. The Senate subsequently approved the release of an additional \$120,000 to the Committee on June 14, 2001.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

PIERRE CLAUDE NOLIN
Chair

(For text of report, see today's Journals of the Senate, Appendix "C", p. 1043.)

The Hon. the Speaker pro tempore: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Nolin, consideration of report placed on the Orders of the Day of the next sitting of the Senate.

ANTI-TERRORISM BILL

FIRST READING

The Hon. the Speaker pro tempore informed the Senate that a message had been received from the House of Commons with Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures

respecting the registration of charities, in order to combat terrorism.

Bill read first time.

The Hon. the Speaker pro tempore: Honourable senators, when shall this bill be read the second time?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, later this day.

The Hon. the Speaker pro tempore: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker pro tempore: Honourable senators, with leave of the Senate and notwithstanding rule 57(1)(f), the Honourable Senator Robichaud moved, seconded by the Honourable Senator Poulin, that this bill be put on Orders of the Day for second reading later this day.

Honourable senators, is it your pleasure to adopt the motion?

Hon. Senators: Agreed.

Hon. Marcel Prud'homme: Honourable senators, I thought the Deputy Leader of the Government in the Senate was going to ask for leave to move immediately to second reading of this bill. He seems to want to do so a little later. He was so kind as to consult me on this. I will perhaps have changed my mind since this morning. If the Deputy Leader of the Government wishes to proceed to this item, he might ask for leave to do so rather than returning to it later today.

Senator Robichaud: Honourable senators, I understand that honourable senators have given leave to move to second reading of Bill C-36. The cooperation of all honourable senators is appreciated. Normally, when we want to proceed to second reading of a bill without having to wait a whole day, it is done later on the same day, after Government Business on the Order Paper. I believe that Senator Prud'homme understands that this is the way we normally do things, and I thank him for his cooperation.

[English]

Senator Prud'homme: With consent of the Senate, we can do it now. I told the deputy leader clearly that I would oppose going to second reading, but at lunchtime I was elected by my colleagues, through a secret ballot, to return to the IPU. That has put me in a good mood, so I will give my consent right now to move to second reading.

The Hon. the Speaker pro tempore: Leave having been granted, the item will be placed on the Orders of the Day for consideration later today.

● (1350)

Thursday, November 29, 2001

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET—REPORT OF COMMITTEE PRESENTED

Leave having been given to revert to Reports from Standing or Special Committees:

Hon. Nicholas W. Taylor, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Thursday, November 29, 2001

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

NINTH REPORT

Your Committee was authorized by the Senate on March 1st, 2001, to examine such issues as may arise from time to time relating to energy, the environment and natural resources.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget application submitted was printed in the Journals of the Senate of March 29, 2001. On April 3, 2001, the Senate approved the release of \$162,820 to the Committee. The Senate subsequently approved the release of an additional \$125,000 to the Committee on June 12, 2001.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

NICHOLAS W. TAYLOR
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "D", p. 1044.)

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Taylor, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NINTH REPORT OF COMMITTEE PRESENTED

Hon. Richard H. Kroft, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

NINTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2001-2002.

Banking, Trade and Commerce (Legislation)

Professional and Other Services	\$ 22,200
Transport and Communications	\$ 0
Other Expenditures	\$ 0
Total	\$ 22,200

Energy and Natural Resources (Legislation)

Professional and Other Services	\$ 15,000
Transport and Communications	\$ 5,000
Other Expenditures	\$ 0
Total	\$ 20,000

National Finance (Legislation)

Professional and Other Services	\$ 3,000
Transport and Communications	\$ 0
Other Expenditures	\$ 0
Total	\$ 3,000

Social Affairs (Legislation)

Professional and Other Services	\$ 2,500
Transport and Communications	\$ 5,500
Other Expenditures	\$ 500
Total	\$ 8,500

RICHARD H. KROFT
Chair

On motion of Senator Kroft, report placed on Orders of the Day for consideration at the next sitting of the Senate.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF STATE OF HEALTH CARE SYSTEM

Hon. Michael Kirby: Honourable senators, I give notice that on Tuesday next, December 4, 2001, I will move:

That, notwithstanding the Order of the Senate adopted on March 1, 2001, the Standing Senate Committee on Social Affairs, Science and Technology, which was authorized to examine and report on the state of the health care system in Canada, be empowered to present its final report no later than June 30, 2003.

[Translation]

BUDGET 2001

STATEMENT BY MINISTER OF FINANCE—NOTICE OF INQUIRY

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I hereby give notice that, on Tuesday, December 11, 2001, I will call the attention of the Senate to the budget to be presented by the Minister of Finance in the House of Commons on December 10, 2001.

[English]

QUESTION PERIOD

SECRETARY OF STATE FOR MULTICULTURALISM

ANTI-TERRORISM BILL—GOVERNMENT PLAN IN
RESPONSE TO MINORITY GROUPS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my first question is to the Leader of the Government in the Senate. The minister's colleague, the Secretary of State for Multiculturalism, Hedy Fry, announced on CPAC television last night that the government had a five-point plan to deal with affairs of the minority communities across Canada about the implementation of Bill C-36.

In order to ensure that this is not an imaginary plan, could the Leader of the Government have this five-point plan tabled in the Senate?

An Hon. Senator: A burning question!

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am not sure that it is "a burning question," but it is an extremely important question.

I must confess to the honourable senator, however, that I do not have that five-point plan. I was not aware of the five-point plan, but I will make contact immediately with the minister and obtain such plan and make it available. Clearly, it is an important part of the debate that will take place on Bill C-36.

Senator Kinsella: I thank the honourable minister for that.

CREDENTIALS OF MINISTER AS MEDICAL DOCTOR

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, in several biographical publications, the Secretary of State for Multiculturalism, Minister Fry, has indicated that she has the degree MD, Doctor of Medicine, after her name. It is also indicated that she studied medicine at the Royal College of Surgeons in Ireland. However, when one goes on the Internet and looks up the programs offered by the Royal

College of Surgeons in Ireland, located in Dublin, near St. Stephen's Green, you will discover that that medical school does not offer the degree MD.

Could the minister inquire whether or not this is another case of a vivid imagination like that of the burning crosses?

Senator Cools: Objection!

Hon. Sharon Carstairs (Leader of the Government): The honourable senator is well aware that Dr. Fry is a fully certified physician in Canada. She has been admitted to the practice of medicine and has practiced medicine primarily in the province of British Columbia. In fact, she has been the President of the British Columbia Medical Association. Therefore, the term MD, which means Doctor of Medicine in terms of our degree, meets certain qualifications and she has those qualifications.

Senator Kinsella: Honourable senators, notwithstanding the fact that the Royal College of Surgeons in Ireland offers degrees such as Bachelor of Medicine, Bachelor of the Art of Obstetrics and Bachelor of Surgery to those who graduate from medical school, that school does not grant the academic degree Doctor of Medicine.

INTELLIGENCE AND SECURITY

STATUTES AUTHORIZING DETENTION ON GROUNDS OF
TERRORIST ACTIVITIES—NUMBER OF DETAINEES SINCE ATTACKS
IN UNITED STATES ON SEPTEMBER 11, 2001

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to turn to more important issues. I should like to find out how many Canadian statutes presently have provisions that authorize detention of individuals for actual or theoretical terrorist activities or for reasons of national security. I do not expect the minister to have that answer right now. It could come in a deferred answer.

Could the minister tell us — and, we asked this the other day — how many people have been detained in Canada since September 11, 2001, in relation to terrorist activities or national security and under what authority they were detained?

• (1400)

Of those, how many were detained in the belief they were members of the Osama bin Laden terrorist network?

Hon. Sharon Carstairs (Leader of the Government): As I informed the honourable senator on another occasion, there are a great many detentions under the provisions of the Immigration Act and its authorities, both the one we passed recently and previous ones. In fact, I think the figure for the year 2000 was something like 38,000. The detentions are not broken down on the basis of whether the detainees have been detained for health reasons or whether they have been detained as potential threats or whether they have been detained for having criminal records or inappropriate documentation.

To my knowledge, honourable senators, there are no further detailed backgrounds. As far as those people who may have been detained with respect to the events of September 11, those files are presently with the RCMP. They are being investigated, and I do not at this point have access to those specific numbers.

[Later]

[Translation]

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker *pro tempore*: Honourable senators, I apologize for interrupting Question Period, but I wish to draw to your attention the presence in the gallery of His Excellency, Jean-Jacques Queyranne, Minister of Parliamentary Relations of the French Republic.

On behalf of all the senators, I welcome you to the Senate and to Canada.

[English]

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—STATEMENT OF REQUIREMENTS—COMPLIANCE OF CORMORANT

Hon. J. Michael Forrestall: Honourable senators, I have a question for the Leader of the Government. In a *Sun* chain newspaper article yesterday, Minister Eggleton criticized Team Cormorant's advertisement in the *Hill Times* about the change to the basic vehicle requirement specifications for the maritime helicopter. The report states that the minister said, "the company wants to make sure no one else qualifies for the \$3-billion contract."

Is the minister admitting that the Cormorant is the only aircraft now technically compliant and able to meet the detail of the basic vehicle requirement specifications? Is that why the Department of National Defence has to change the basic vehicle requirement specifications about which I asked questions yesterday?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, there is a simple answer to that question. The answer is no.

Senator Forrestall: I did not even get plugged in. Would you repeat that?

Senator Carstairs: No.

Senator Forrestall: Do not laugh. I have another question to which she cannot say no.

Honourable senators, the military set the basic vehicle requirement specs and the military deserves the best. Is it not true

that an official at the Department of National Defence, in this case Mr. Paul Labrosse, project manager on the Maritime Helicopter Project, met with all three major helicopter contenders for the Maritime Helicopter Project this summer and asked each if they were compliant with the basic vehicle requirement specs? Is it true that, at that time, only the Cormorant was found to be technically compliant with the detailed specs?

Senator Carstairs: Honourable senators, my information is that the only aircraft that was not compliant at that time but that hopes to be compliant by the time the final bids are sought was Sikorsky.

Senator Forrestall: Honourable senators, the real reason the new basic requirement specs are being issued is because the only competitor now technically compliant for the skewed competition for the basic vehicle is Team Cormorant. Is it not true that both Eurocopter and Sikorsky demanded changes to the basic vehicle requirement specifications to enable them to technically compete in this competition? Will the minister come clean with the chamber and tell us the real reason that the basic vehicle requirement specifications are being changed? Believe me, they are being changed, minister. I would not stand here if I were not certain of that. I suggest it is to prevent Cormorant from winning this skewed competition uncontested.

Senator Carstairs: Honourable senators, this competition is not skewed. It has been open since the very beginning, but there has been a dialogue. That dialogue to date has generated 1,000 comments from interested parties. I would hope that the honourable senator is not suggesting that the Government of Canada should not seek the very best possible aircraft at the very best possible price and should not engage in active dialogue in order to ensure that we get both the best aircraft and the best price.

Senator Forrestall: I am sure honourable senators will be pleased to know that my very modest effort to elicit information pales in significance to the over 1,000 queries that have already been made. The word "skewed" is not mine; that word comes from a little higher up than this. The word "skewed" is apt here.

Do I understand the minister to be telling me that while there may have been conversations and all of that, no evidence was elicited from those summer meetings that, indeed, Cormorant was the only technically compliant competitor?

Senator Carstairs: Honourable Senator Forrestall, you were the one who used "skewed" and not me. The contract is not skewed. My information is clear. The only other aircraft that was not compliant because it had not yet reached its certification was the Sikorsky. It hopes to be certified by the time the final bids are available, but all the other players have been certified. Clearly, all are still in the bidding process.

Senator Forrestall: Honourable senators, to be clear, the word "skewed" comes from the courts. I was not the one to begin its use.

FOREIGN AFFAIRS

GOVERNMENT POLICY ON FOSTERING DIALOGUE ON TERRORISM WITH CERTAIN COUNTRIES

Hon. Marcel Prud'homme: Honourable senators, yesterday, out of courtesy, I yielded to Senator Carney. I wish to come back to what I was about to ask yesterday.

I refer to a question asked by our able colleague Senator Roche on the initiative that Canada should immediately undertake concerning the volatile situation in the Middle East. Senator Roche asked yesterday about the kind of initiative that could be taken over by Canada without just saying generally that we are in favour of initiatives. Are there any more initiatives that the government could undertake?

In passing, and I do not want an answer today, but I resent very much the fact that we do not pay to the Leader of the Government in the Senate, the minister, the same salary as the minister of the other place. It is unbelievable to be a minister of everything while being paid less compared to a minister of a few things in the other place. That is just an aside.

An Hon. Senator: You are in a good mood.

Senator Prud'homme: Yes, I am in a good mood since the return of the prodigal son to the IPU.

[Translation]

You are well aware of my keen interest in that part of the world, where some people are probably getting ready to attack Iraq and perhaps other countries afterwards. Again, Canada has this reputation. I will talk to a minister of the Crown this afternoon.

● (1410)

I just got back from Libya. The world seems to have changed since September 11. Why not take advantage of this change of atmosphere? Even in Libya, our relations could be excellent, including our trade relations. This would greatly benefit Westerners, including people in Calgary, and the agriculture industry.

Thanks to its great reputation, Canada has an opportunity to take specific initiatives. We are welcome over there. We are still popular. So why not take advantage of that reputation, which can be confirmed by the mere mention of the word "Canada"? Not too long ago, I was able to witness this popularity firsthand. To people who looked at me in a somewhat strange manner, I would simply say, in their language, that I was a friend from Canada. The atmosphere would then change immediately. Why not take advantage of the openness of people in the Middle East toward Canadian initiatives?

I would appreciate it if the minister would ask the ministers responsible and the Prime Minister why we have not been involved in new initiatives since September 11. This absence

could lead us much further, and, in fact, much too far. I am simply asking the minister to convey Senator Roche's question and the point of view that I have just expressed to the government.

[English]

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Prud'homme for his question. First, let me make it clear that I get paid exactly the same amount as any other minister of the Crown. I do get an overall salary that is slightly less than the overall salary of a minister who serves in the House of Commons, but that is as a result of the fact that the salaries of members of Parliament are \$25,000 more than our salaries in this place.

● (1410)

Since I am a perfectly happy member of this chamber, I have no desire to go to the other place, and I accept the payment that each and every senator gets to serve in this honourable chamber.

Hon. Senators: Hear, hear!

Senator Carstairs: However, regarding the honourable senator's specific question as to whether we could do more in the Middle East, it is a question that deserves the time and attention of cabinet. It deserves my taking that message to cabinet, which I will do, not only on behalf of Senator Prud'homme and Senator Roche but, quite frankly, on my own behalf as well. I believe, as in so many opportunities, Canada has unique roles that it can play on the world stage. When tensions are tight and when tensions get hot, that is when the cool-blooded Canadians can often be of the greatest service.

INTERNATIONAL TRADE

UNITED STATES—IMPROVED TRADE AS A RESULT OF SECURE PERIMETER—GOVERNMENT POLICY

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. On November 27 of this year, trader experts Michael Hart and William Dymond of Carleton University in Ottawa released a paper called "Common Borders: Shared Destinies." In this paper they argue that the environment is now right for major strides towards improving and expanding Canada's trade agreement with the United States if Canada can win the confidence of Americans in our ability to help to maintain a secure North American perimeter. The paper goes on to assert that in an environment where both Canada and the United States are secure within a common North American perimeter, the border could be open for freer trade and the countries could advance improvements in trade relations building on the basis of the 1985 Free Trade Agreement.

Could the Leader of the Government in the Senate provide us with her government's position on the arguments advanced by Mr. Hart and Mr. Dymond, and what steps are now being taken to improve the perimeter?

Hon. Sharon Carstairs (Leader of the Government):

Honourable senators, I have not had an opportunity to read the Hart and Dymond study, "Common Borders: Shared Destinies," but I certainly will undertake to obtain a copy.

In terms of what the authors advocate, I am personally not clear what is meant by the use of the term "perimeter." I do understand what is meant by the term "borders." I can tell the honourable senator that our greatest opportunities for trade tend to come along the line that runs between Canada and the United States. That is our shared border, our 49th parallel, although it is not the 49th in every place, as I used to point out to my geography students, but it is generally at 49 degrees across this country. The shared border must be made effective, viable and workable. On December 10, I believe the honourable senator will come to recognize that the government is making considerable progress in that area.

UNITED STATES—POSSIBLE COORDINATION TO IMPROVE
SERVICES AT BORDER CROSSINGS

Hon. Donald H. Oliver: In the minister's reply she refers to the word "border." The U.S. government has already enacted legislation that includes a provision to triple the number of customs and immigration officers at its North American borders. As Mr. Hart asserts, it will take only six to nine months for those people to be trained and deployed. Once they are on the job, the U.S. capacity to do more inspections and more thorough questioning will greatly increase the now slow border crossing traffic.

In order to counter the likelihood of any problems, will the minister advise us whether her government will be making a coordinated and highly visible effort to engage the Americans in broadly defined talks to coordinate security, immigration and trading policies for Canada?

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Oliver for his question. It might come as a surprise to him that the Americans will equal the number of Canadian customs officers when they put this new force, if you will, into effect. The current status, however, has not significantly blocked traffic going from Canada into the United States, or from the United States coming to Canada.

The second part of the honourable senator's question, which talks about efficiencies and putting in place the new work plan quickly, I think is the essence of what we need to settle. That is being worked on. As you know, Minister Martin and Minister Cauchon met last week with Treasury Secretary Paul O'Neill as to how we can make those efficiencies work to both our interests, and progress is moving forward at a quick pace to ensure that we do not have further disruptions because disruptions hurt us more than they hurt the Americans.

AGRICULTURE AND AGRI-FOOD

RE-ESTABLISHMENT OF BANNED CONCENTRATED
STRYCHNINE TO CONTROL GOPHERS

Hon. Herbert O. Sparrow: Honourable senators, my question is for the Leader of the Government in the Senate. There is a very serious problem of damage to crops in Western Canada by an invasion of Richardson's ground squirrels, commonly referred to as gophers. Prior to 1992 the Pest Control and Products Act allowed for the use of concentrated strychnine for the control of gophers. This product was made available in Saskatchewan and Alberta, to rural municipal governments, for sale and distribution to farmers and ranchers.

In 1992, the permission to sell and distribute concentrated strychnine was withdrawn. In its place a ready-to-use product of strychnine mixed with oats was licensed by the Pest Management Regulatory Agency for use by the agriculture industry. This product has proven to be ineffective for the control of gophers. Could the minister determine what the government is doing to licence the use of the strychnine product that was in use prior to 1992? Could the minister table in the Senate all scientific studies resulting in changes made to the availability of the product and, as well, all scientific studies relating to any human deaths or dog deaths from strychnine poisonings that would have been considered in making changes in the availability of the product to the agricultural industry?

• (1420)

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Sparrow for his question. I am sure that those honourable senators who do not live in Western Canada, particularly those who live in urban centres, are not quite as aware of the gopher problem that exists. I can assure honourable senators that on a summer day, when I look across my lawn leading down to Lake Winnipeg, I can see those little creatures popping up all over the place. I am well aware of the gopher problem about which the honourable senator is asking his question this afternoon.

I will seek the information that the honourable senator has requested, and ask that the information be provided to me as soon as possible.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in this house a response to a question raised in the Senate on November 6, 2001, by Senator Bolduc, regarding the World Trade Organization.

INTERNATIONAL TRADE

WORLD TRADE ORGANIZATION— MULTILATERAL NEGOTIATIONS—SENATE INVOLVEMENT

(Response to question raised by Hon. Roch Bolduc on November 6, 2001)

During the 4th WTO Ministerial Conference in Doha, Qatar, WTO Members reviewed the operation and functioning of the multilateral trading system and decided on the possible agenda for enlarging trade negotiations from the subjects currently under discussion (agriculture and services). This included a Ministerial Declaration and decisions, including on accession of new Members to the WTO. These documents can be found on the WTO web-site at http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/min01_e.htm.

International Trade Minister Pierre Pettigrew tabled a document on October 24th before the House of Commons Standing Committee on Foreign Affairs and International Trade, outlining Canada's objectives for the 4th WTO Ministerial Conference and for the launch of a new round of trade negotiations at the WTO. The document includes details on Canada's position on specific issues, and is available on the Department of Foreign Affairs and International Trade web-site at <http://www.dfait-maeci.gc.ca/tna-nac/WTO-obj-e.asp>. The Minister also addressed the Ministerial's plenary session on November 10th in Doha, Qatar, highlighting Canada's principal objectives for the 4th Ministerial. This statement is available on the WTO web-site at http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/min01_statements_e.htm. The results of the Ministerial Conference are available on the WTO web-site at http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/min01_e.htm.

Canada's overall objectives for a new round of negotiations are to improve the lives of Canadians by increasing economic growth and productivity; create opportunities for Canadian agri-food, industrial, and service exporters and investors by achieving greater access to foreign markets and ensuring fairer conditions for their activities; provide Canadian consumers with better choices and better prices in goods and services; reflect changes in the global economy by updating WTO rules; encourage the WTO to be more transparent and open; contribute to economic growth and poverty reduction in developing countries; and address public concerns about the social and environmental implications of trade.

The 63 member delegation includes federal government officials, parliamentarians from five political parties, provincial/territorial government representatives, and private sector/NGO advisors. Criteria used for selecting

advisors included: expertise on Ministerial priorities, committed and engaged on trade policy issues, constructive contribution to the delegation, and credibility with constituents.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to start with Item No. 1 on the Orders of the Day, followed by the report of the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-7, and then move on to second reading of Bill C-36, as agreed earlier.

[English]

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other Acts.

Hon. Donald H. Oliver: Honourable senators, I am pleased to rise today to participate in third reading debate of Bill C-31, the Export Development Act.

Last week I expressed my concerns about this bill, and I rise today to reiterate those concerns, after having heard from witnesses before the Standing Senate Committee on Banking, Trade and Commerce. There were two points that I raised at second reading: the environmental conditions and the public access to information.

Bill C-31's most significant change, and by far the most controversial, concerns a proposed exemption for the Export Development Corporation from the Canada Environmental Assessment Act and the Access to Information Act. As I refocus on the environmental concerns I raised at second reading, I would state clearly that I do not have any problems with the general principle of this approach. Indeed, I welcome the legislative requirement for such a review process. However, exempting the EDC from the Environmental Assessment Act makes us irresponsible when it comes to the environment.

The evidence used to support my concerns with respect to Bill C-31 was derived from credible sources. As I said last week, in 2001 the Auditor General identified significant gaps in the EDC's environmental review framework. What was also found were "gaps in transparency, particularly in the area of public consultation and disclosure of information, all critical elements of a credible environmental review process." Furthermore, the review indicates that short-term business ventures, which represent two-thirds of the EDC's dealings, are not subject to environmental review.

There is little excuse for ignoring the findings of the Auditor General's report, especially in this case where the EDC is unwilling to establish its own concrete guidelines for environmental review. The public has a right to be informed about environmental risks of the EDC's insurance business. Other financial institutions in Canada, and internationally, are being held accountable or have an established approved standard for environmental issues.

There are always risks involved with business, but my concern is that the EDC should be bound to inform the citizens of Canada of the potential or the level of risk being undertaken by their activities.

We are already aware, and it is a matter of record, that the Export Development Corporation, or Export Development Canada as it is now called, is not noted for having an adequate environmental track record. Evidence of the EDC's lax policies were presented by Patricia Adams of Probe International before the Banking Committee where she said:

We have 20,000 supporters from across the country who are concerned about EDC's long history of financing damaging projects, including nuclear technology to military hot spots in Pakistan and India, mines that dump cyanide into rivers and hydro dams that destroy fertile valleys in poor countries and force millions of people off their land.

Ms Adams also expressed concern in regard to the lack of review process for the EDC:

The effect of this, according to Parliament's own legislative summary, is to give EDC's board complete, unlimited freedom to make any decision that would be virtually immune from judicial review.

Ms Adams continued later on:

Bill C-31 will allow EDC to write the rules, establish the criteria, define the terms, assess itself and then decide whether it is justified in supporting a project that will destroy the environment.

The NGO working group on the Export Development Corporation is deeply disappointed with this bill. They have compiled an extensive dossier on the EDC. The case studies on EDC-supported projects detail the impact on the environment, on international commitment and, consequently, on people's lives.

According to Ms Revil, a representative of the NGO working group who appeared before the committee:

Not only does Bill C-31 fail to provide appropriate checks and balances, or much needed direction, it proposes to reinforce, in law, a status quo that is highly problematic. Over 140,000 Canadians have written to the government, up to a few months ago, to express dismay over the status quo. Pages of newsprint have been dedicated to the failures of EDC as a public institution. Yet, Bill C-31 is silent in all areas of public interest, with the exception of the environment. Basically, it merely states that the EDC can decide what it will do.

Honourable senators, Bill C-31 does not ensure integral environmental protection against the EDC's business. If the government does not respect the Auditor General's findings and the recommendations of the Standing Committee on Foreign Affairs and International Trade of the House of Commons, can we believe or expect that the EDC will seriously establish an environmental review process?

We are duty-bound to establish guidelines reflecting the Canadian conscience and to maintain the Canadian integrity we have worked so hard to build. We cannot, with a clear conscience, allow the EDC to support environmentally unsafe projects overseas which may result in an adverse effect on what we know as the global environment.

Honourable senators, does the EDC's involvement in the Three Gorges Dam reflect Canada's values and our commitment to protecting our global environment? I think not. We cannot entirely blame the EDC for the Three Gorges situation, as it was the Prime Minister who announced the EDC involvement in the Three Gorges project during a 1994 Team Canada trade mission to China.

This bill is self-serving, and we should question the reasons the government is anxious to have the bill passed so quickly.

The EDC, which has always assumed its exemption from the Canadian Environmental Assessment Act, now faces two problems: First, the EDC must realize that Canada is committed to environmental protection; and second, the courts are looking into whether the EDC violated the government's own environmental assessment laws in approving a recent CANDU nuclear reactor sale to China.

With the government anxious to complete the sale of yet another CANDU reactor, this time to Romania, a country known for its poor nuclear safety record, the EDC's improprieties, in fact, may be subject to the Canadian Environmental Assessment Act. If Bill C-31 passes, the government will no longer need to worry about being taken to court for failing to abide by its own environmental guidelines; the EDC would be exempted. Furthermore, an environmental assessment would not hinder the CANDU sale to Romania.

Honourable senators, as I said before, if we believed that there was a possibility for the EDC to establish an appropriate framework exemplifying the Canadian perspectives on environmental issues, we would accept Bill C-31, but that is not the case. Bill C-31 falls short in terms of completeness, transparency and accountability.

• (1430)

Honourable senators, Bill C-31 does not prohibit the EDC from entering into questionable environment projects, but simply says that the EDC must ask itself if it is justified in so doing. If the EDC is incapable of establishing a sound review process to address environmental concerns, how are we to believe it is capable of making sound decisions as when to apply or not to apply the environmental review?

The EDC escapes all possible scrutiny. The bill declares that such a directive would not be a statutory instrument for purposes of the Statutory Instruments Act. In other words, Parliament will not have the option to review directives taken by the EDC. This implies that the EDC cannot be challenged on any undertakings that it deems an exception to its guidelines. Indeed, this is a self-serving loophole. One part of the clause says that there must be a review, and the other part dictates that the board of directors has overriding discretionary power to their own rules. It cannot be challenged on what it considers to be a mitigating measure. Indeed, the way the bill is worded, mitigating measures do not actually have to be undertaken, as the wording is framed in terms of whether there would still be a problem if they were undertaken.

Honourable senators, what makes the review of Bill C-31 more worrisome is the EDC's exemption from the Access to Information Act. Therefore, there is no legal obligation to inform the public. Ms Patricia Adams, the Executive Director of Probe International, who appeared before the Standing Senate Committee on Banking, Trade and Commerce, also expressed her concerns as follows:

The Access to Information Act is a good law. It is not always evenly applied. It is often under threat from the government of the day, but it is one of the most important democratic tools the citizenry of this country has to define and obtain what it wants to know about government activities rather than the other way around.

Without it, public oversight of EDC's activities is handicapped, allowing this Crown corporation that operates on Her Majesty's credit card to escape effective accountability.

To placate public demand that EDC be subject to the Access to Information Act, EDC has offered up a wholly inadequate substitute, its new disclosure policy. Just as Bill C-31 creates a toothless exercise in environmental review that is designed for public relations, EDC's new disclosure policy is similarly designed to convince the public that EDC will be more transparent while it largely maintains the status quo.

Ms Revil from the NGO Working Group on the EDC went one step further by indicating the stipulations that should be in Bill C-31. She said:

This bill should lay out criteria that it expects EDC to follow, such as the following: All transactions with potential or known significant adverse impacts must undergo an environmental assessment; all environmental assessments or transactions with known significant adverse impacts must include the consultation of locally affected populations; and information collected on impacts, through an assessment process, must be made public at least 60 days before the transaction's approval by the board of directors.

The EDC is not bound to appropriations, so there is no opportunity for either a House of Commons committee or a Senate committee to question its activities or to deny funding for objectionable projects as part of the supply process.

Honourable senators, the sole stipulations regulating the actions of the EDC within Bill C-31 is the Auditor General's review. Every five years, as I said at second reading, an audit will be carried out to review the design and implementation of the EDC's environmental directive and to report the findings to the minister and to Parliament. In actuality, it could take as many as six years by the time the report is finalized and tabled before we would find out if the EDC's environmental directives are sound. Now is that good public policy?

More distressing is that when the report is released, there is no obligation for the minister or the EDC to adjust procedures or policies to address any problems that may arise.

Much can happen in the five years before the Auditor General must report, and some have argued for an even shorter period review. Five years is the ceiling, and perhaps the minister should not wait that long.

Given the history of the EDC, I would be much more comfortable if there were some kind of parliamentary oversight of the EDC's environmental directives. The Library of Parliament's legislative summary on Bill C-31 makes an interesting observation on this point:

Because Parliament has not prescribed any limits or criteria, the Board appears to have complete, unlimited freedom to make any decision, i.e., to define terms as it chooses, or to exempt any project it chooses. As well, the complete absence of limits on the decision-making power would suggest that the Board directives would be virtually immune from judicial review.

Honourable senators, the legislative summary goes on to outline some options to deal with this, all of which the government seems to have ignored. The summary states:

The bill could specify that the Board must give reasons for exempting a transaction or a class of transactions. This would increase the transparency in the decision-making process, and would provide a reviewing court with something upon which to determine that the decision had been arrived at properly and not for improper reasons.

Or, it could require that the Board submit its directives to a Parliamentary committee for approval (as is increasingly the case with regulations).

Parliament could also require the Board to consult with concerned groups or other government departments, most obviously, the Minister of the Environment, prior to making directives, particularly where the directive involves defining terms such as "adverse environmental impact".

As well...Parliament itself could prescribe, or incorporate by reference, the criteria to which the Board would be required to have reference in issuing directives.

In conclusion, honourable senators, there is a variety of ways to address the concerns I have raised about Bill C-31. A simple way to deal with this would be to deem those environmental directives to be statutory instruments. This would allow Parliament to review them if Parliament were so inclined and, indeed, would at least require that they be presented to Parliament.

Honourable senators, the wording of Bill C-31 specifies that such directives are not statutory instruments.

MOTION IN AMENDMENT

Hon. Donald H. Oliver: Honourable senators, to reverse this, making them into statutory instruments, I move, seconded by the Honourable Senator Di Nino:

That Bill C-31 be not now read a third time but that it be amended in clause 9, on page 3, by replacing line 31 with the following:

"(3) The directive is a statutory instru-".

Honourable senators, the result of this amendment is that lines 31 to 33 would read:

(3) The directive is a statutory instrument for the purposes of the Statutory Instruments Act.

I believe this would go a long way to increase both the transparency and the accountability of the EDC's environmental review process, and I would urge honourable senators to support the amendment.

• (1440)

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Have the whips agreed to the time for the ringing of the bells?

Hon. Terry Stratton: We would like to defer the vote until tomorrow.

Some Hon. Senators: Tomorrow.

Hon. Bill Rompkey: Honourable senators, perhaps we could defer the vote until 3:30 p.m. on Tuesday next?

The Hon. the Speaker: Honourable senators, pursuant to the agreement of Senators Rompkey and Stratton, I now put it to the house: Is it agreed that the vote will be at 3:30 —

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): No agreement is required.

The Hon. the Speaker: If there is no agreement, it is normally deferred until 5:30 p.m. However, is it agreed then that the vote will be at 3:30 p.m. on the next sitting day of the Senate?

Hon. Senators: Agreed.

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, with amendments) presented in the Senate on November 8, 2001.

The Hon. the Speaker: Does the Honourable Senator Joyal wish to speak?

Hon. Serge Joyal: Honourable senators, the adjournment of the motion stands in the name of the Honourable Senator Moore, who has informed me that he has no objection to me addressing the Senate this afternoon on this motion.

The Hon. the Speaker: Senator Joyal has the floor.

[Translation]

Senator Joyal: Honourable senators, this afternoon, we are resuming debate on the report by the Honourable Senator Milne with respect to Bill C-7 concerning a youth criminal justice system.

This bill has been debated extensively in this chamber and discussed at length in the Standing Committee on Legal and Constitutional Affairs. The honourable senators who have already spoken in this chamber have emphasized the large number of witnesses who appeared and the serious and detailed consideration of the bill by the committee. The other chamber held a comparable debate, at the end of which the Honourable Minister of Justice agreed to an important number of amendments to the initial bill.

This bill is not like many other bills we debate, the purpose of which is to adjust how the government manages its affairs in order to meet particular needs. Essentially, this bill would create a new youth justice system. As a result, the youth justice system we have known to date would be set aside in favour of a new system, which should be more effective, fairer, and more able to meet the needs of youth and the objectives generally desired by Canadian society.

This bill is important, and particularly so for Quebec, because it will have an immediate and significant impact on how the Quebec youth justice system works. As the senator representing the district of Kennebec, I feel compelled to take a particular look at the impact of this legislation, and also because, out of all the provincial youth justice systems, the Quebec structure — as was recognized by the majority of witnesses — is better than the one in the other provinces, since it succeeds in keeping Quebec's

young offenders out of jail. Indeed, one of the goals of the new system is to reduce the incarceration rate for young people in Canada, a rate which, according to the Minister of Justice, is among the highest in the Western world.

This wounds our pride as Canadians, because we believe that we are living in a so-called liberal society. We want to live in a society that firmly believes in an individual's ability to enjoy his rights and freedoms to the fullest, while trying to make a contribution to Canadian society. Therefore, when we set up a new youth justice system, we must first ask ourselves on what fundamental principles such a system should be built. On what fundamental values should it be based? We can refer to two sources. First, Canadian law, which is the way our courts and our legislation have defined the status of children or youth. For example, the Honourable Beverley McLachlin made the following statement about children in 1998 — a few years before she became the Chief Justice of the Supreme Court of Canada — at the fourth biennial conference of the International Association of Women Judges:

[English]

We must move from the view of a child as a thing and object, to the view that the child is a person, in the true sense of the word, with rights to be protected.

To me, that is the fundamental principle. The child or the teenager is a person and has to be protected; and he or she has specific rights and specific obligations. That statement of the Honourable Beverley McLachlin is not a statement which has come out of the blue. Other justices of the Supreme Court in previous years have defined quite clearly what is the legal norm —

[Translation]

Honourable senators, what legal standard should apply when we want to define children's rights? I will quote an excerpt from a decision by the Honourable Bertha Wilson.

[English]

Many of us knew the Honourable Bertha Wilson. In a 1986 decision in a case known as *Hill v. the Queen*, the Honourable Bertha Wilson wrote the following statement:

[Translation]

If the youth justice system is to faithfully reflect the concept according to which children pass through various stages of development on the way to full-fledged adulthood, it must address their actions according to some degree of the standard they will attain with adulthood. The norm applicable to the average adult must be gradually modified to reflect the diminished responsibility of the accused because of his or her age.

[English]

What does that mean in plain terms? It means that a teenager or a child is not subject to the same legal norm as that of an adult. This is a fundamental principle. That approach has been confirmed in other cases of the Supreme Court.

In 1993, Mr. Justice Cory of the Supreme Court stated in the case *R v. M (J.J.)*:

[Translation]

...dispositions must be imposed on young offenders differently because the needs and requirements of the young are distinct from those of adults.

[English]

What does that say? It says in legal jargon that —

[Translation]

— the legal standards applicable to children and adolescents cannot be the same as that applied to adults. This is the underlying principle, and it is nothing new. It was not just invented. It was expressed as far back as 1970 by the association of youth judges or magistrates. For example, it is very clearly stated in a 1970 article by the European Judge, Séverin-Carlos Versele, that, and I quote:

The legal norm tends to become relative in cases of youth protection; it is not something that must absolutely be imposed until *percat mundus*.

• (1450)

I will spare you the trouble of deciphering the Latin expression. What it means is that, in our Canadian system, when a youth justice system is constructed — in this case one for adolescents since we are talking of young people aged 14 to 18 — the guiding principle is that the young person's responsibility is graduated, and the system must be tailored to his or her degree of development, until the age of legal majority is attained, at 18. At that age, the degree of responsibility changes. This is the fundamental philosophy of the Canadian legal system. The Honourable Senator Pearson, who has for years been involved in international debates around children's rights, understands this and has provided us with a very eloquent explanation of how international treaties have defined this legal norm according to which the child is a person with different needs and one whose "criminal responsibility" cannot be assessed on the same basis as when he or she has reached adulthood.

I consider this principle exceedingly important, since it is reflected in the Convention on the Rights of the Child, the Beijing Rules, the International Convention on Civil and Political Rights and the Vienna Meeting of 1994, which set out the legal

standards in juvenile justice. All these international instruments apply in the interpretation of Canadian law. This, in my opinion, is where there is a slightly different interpretation of the importance of these treaties in Canadian law.

Honourable senators, I am stressing this angle, because, as you know — we mentioned it at second reading — some of the provisions in this bill will be debated at the Quebec Court of Appeal. This reference, if the parties so wish, could ultimately end up before the Supreme Court of Canada. How does the Quebec Court of Appeal see international treaties in the interpretation of Quebec law, in the interpretation of the Civil Code, specifically, and of Canadian law?

Honourable senators, I can tell you that in a decision given on October 24, 2001 — and this is November 29, so, barely a month ago — it had the following to say in this regard:

It should be noted that no legislation has incorporated the Pact of 1976 in domestic law. Judges are not bound by the standards of international law in interpreting the *Charter*, but these standards constitute a relevant and persuasive standard for interpreting its provisions, as Chief Justice Dickson stated in *Re Public Service Employee Relations Act...* and Madam Justice L'Heureux-Dubé in *Baker v. Canada...*

I repeat, this is a pertinent and persuasive standard for interpreting the provisions of the Canadian Charter of Rights and Freedoms.

Honourable senators, this is the crux of our whole debate. The government must have the right to govern, particularly in this instance. In its election platform last year, it promised Canadians that it would introduce a new youth justice system. We must all of us recognize that the government has a responsibility to deliver on this promise. It is there in black and white in the red book. However, in so doing, the government must respect the rule of law in Canada, as well as the international obligations Canada has assumed over the years.

When we look more closely at certain provisions of Bill C-7, we see that a number of them raise important questions with respect to the real conflict between certain provisions and Canada's obligations with respect to certain international instruments. The first one that jumps off the page is the very title of the bill: An Act in respect of criminal justice for young persons. What does the word "criminal" mean? It means "punitive," "violation of the law calling for a penalty." What we are putting in place is a system that describes itself as criminal. It is not about justice for young persons. If words are to mean anything, let them speak for themselves. A number of the bill's provisions are addressed specifically at the needs of young people. I certainly do not wish to suggest to you that a very large number of the bill's provisions are contrary to the interests of young people, which is the very foundation of the system. Several members of our committee pointed these out.

Therefore, the bill contains essentially provisions for punishment, sentencing, which introduce into the youth justice system the sentences provided for in the Criminal Code. This is the case for all offences for which a sentence of more than two years would normally be given.

The Hon. the Speaker: I am sorry, Senator Joyal, but your speaking time is up. Do you wish to seek leave to continue?

Senator Joyal: Yes, honourable senators.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Joyal: What I think we should focus on is that by making sentences automatic, in other words as soon as a certain offence is committed — an offence defined in the Criminal Code —, the penalty that follows is the criminal penalty. This bill recognizes what is known in English as —

[English]

— the principle of penal sentencing. To me, this is where in this bill there is a fundamental question of how that new reality will be interpreted in the juvenile justice system. Other sections in the bill question some provisions of the various instruments that I quoted earlier on. The courts will have to read and interpret the bill carefully in order to decide whether or not some provisions of this bill are constitutional.

• (1500)

You understand, honourable senators, that, as legislators, our job is to question ourselves and question bills, especially when those very questions are in front of a provincial court of appeal where last month judges recognized that those obligations are of immediate interpretive value in defining the content of those provisions.

[Translation]

Honourable senators, this is one of the reasons the last amendment proposed on your list of amendments specifies that the Honourable Minister of Justice, in conjunction with the provincial attorneys general and the representatives of the aboriginal people, after three years —

[English]

— will check how the bill has been implemented and how we have been satisfying the norm with regard to taking care of the superior interests of the child under the justice system for kids in our country.

To my mind, this provision is simple. This morning, at the Legal and Constitutional Affairs Committee meeting, again

under the chairmanship of our able Senator Milne, we adopted Bill C-24, which contains a similar provision. Why? Bill C-24 moves to new ground. We do not know how that authorization given to the police in Canada will be used. In her great wisdom, the Minister of Justice has proposed that, within three years, we look to see how it has been implemented.

I am trying to convince honourable senators that this system of juvenile justice is a new system. It is not just an amendment to the previous system; it is a new system. The committee adopted an amendment asking the Minister of Justice to review the implementation of the bill, the application of the bill, or, as per the discussion we had this morning, the enforcement of the bill. In three years, the Senate will have an opportunity to see whether it works; whether the objective of lowering the incarceration rate in Canada is being met; whether the provinces have put the money in alternative measures; and whether a specific system has been put together for the Aboriginal people. The committee had a very deep concern about that point, and I know that some other senators have already addressed that or might address it later in the debate.

The amendments seem to be natural. They flow from what we are trying to do here to deal with the rights and freedoms of a vulnerable segment of society; in fact the most vulnerable one, those who have less social support, less opportunity for education, a weakened family environment, and not the same opportunity that the average Canadian kid has to become a positive contributor to our society. Therefore, honourable senators, I will vote for adoption of the report.

The report is not perfect. There is an amendment in the report to which I took exception, and I abstained from voting on it. That amendment compels a judge to disclose information related to young offenders. The international convention on this aspect is clear, and I think that even the bill as it stands might be in breach of that convention.

Hon. Anne C. Cools: Honourable senators, I do not want to comment on the substantive issues of the bill, but I do want to say a few words on the unhappy situation senators found themselves in respect of the report of the Legal Affairs Committee. Essentially the chairman of the committee and the sponsor repudiated the report, and senators are being called upon to choose between Liberal senators for and against the report.

I wish to put a quotation on the record that I did not have with me during debate last week. I thought that future endeavours and future debates could profit from its consideration. The quotation has to do with the functions of committees and the duties and powers of committees. It comes from a gentleman who was by far one of the great eminent authorities on the subject matter, Sir Reginald F.D. Palgrave. The book is entitled *The Chairman's Handbook*, and the subtitle is *Suggestions and Rules for the Conduct of Chairmen of Public and Other Meetings Based Upon the Procedure and the Practice of Parliament*.

I should like to read from chapter 12, page 87, which speaks to the question of committee procedure. The subtitle is "Duties and Powers of a Committee," and Sir Reginald said as follows:

A Committee being a body endowed with delegated powers cannot act independently of its originating authority, or exceed the commission entrusted to it, or entrust its duties to others. The assistance of those who appoint the Committee is its legitimate function. And this assistance is generally rendered by the conduct of an inquiry through the reception of evidence, the drafting of a document, or the consideration of papers referred to the Committee.

My sole comment on this, honourable senators, will probably become more relevant in the future as we go forward, or perhaps as we reflect on the events. However, rather than mobilizing to defeat this report, a wiser or alternative strategy could have been to recommit the bill. In other words, we could have referred the bill back to the Legal Affairs Committee, and asked the committee to reconsider the advice or the recommendations it had made to the Senate chamber.

I wanted to put that point on the record for the sake of peace and justice, particularly because I think it is important that we understand that a major aspect of parliamentary life in this country, and any Commonwealth country, is the proper and efficient functioning of a party caucus. As a matter of fact, it has been said by many that a government functions as well as its party caucus functions. It is at times like this that I think we miss the great scholarship of former Senator John Stewart and those of his ilk.

I would remind honourable senators that if and when senators, for whatever reason, are distressed, anxious or dissatisfied with a committee report, the more parliamentary solution is to send the bill back to the committee, to recommit it, and to have the committee bring back to the Senate what the Senate would consider to be a better report. I just wanted to note that for the sake of upholding this noble institution of Parliament which we all love and all want to uphold and defend.

On motion of Senator Moore, debate adjourned.

• (1510)

ANTI-TERRORISM BILL

SECOND READING

Hon. Sharon Carstairs (Leader of the Government) moved the second reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism.

She said: Honourable senators, I rise today to begin second reading debate on Bill C-36, the anti-terrorism bill. This bill is a critical piece of Canada's response to the threat of terrorism, a threat that while certainly not new to any one of us presented a new threat to the world on September 11, 2001. Since that terrible day, countries around the world have moved quickly to respond with enhanced security measures through increased investigative efforts, through diplomatic initiatives, through an ongoing military campaign and through humanitarian relief. Canada has played its part on all of these fronts.

We have made progress, but, honourable senators, it would be wrong and it would be dangerous to think that the significant threat of terrorism has been eliminated. While the government, in partnership with the international community, has taken and will continue to take measures to maintain the security of Canadians, we must be vigilant to guard against future terrorist action. Our response to this threat must be wide ranging and long term. The proposed legislation in Bill C-36 is a vital part of this response.

Honourable senators, this is not, of course, the first time we in this chamber have had the opportunity to consider the initiatives contained in this bill. When this bill was first introduced in the other place, the government asked the Senate and then I in turn asked the members of this chamber to conduct a pre-study of the subject matter of the bill.

When I spoke in this chamber on the motion to appoint a special committee of the Senate to conduct that pre-study, I said the pre-study was one way of ensuring timely passage of the bill while, at the same time, maximizing the Senate's capacity to make a real contribution to the legislative process. I said that I was confident that our committee would be able to make a very important contribution.

Honourable senators, as we look at the bill that we have now received from the other place and if we compare it to the one that was originally tabled there, the conclusion is clear. Our committee, indeed, had a fundamental impact on this critical piece of legislation. It is evident that the concerns raised by the committee were taken very seriously by both the government and the members who studied the bill in the House of Commons.

Were all the recommendations presented by the special committee accepted? No, they were not; but, it is clear to me from the bill as amended, and from statements made by the Minister of Justice in particular, that every single recommendation was considered seriously and responded to even when in some cases not accepted. I believe the safeguards in the bill have been significantly strengthened, while remaining an effective legislative package to fight terrorism.

I thank the committee chair, Senator Fairbairn, its deputy chair, Senator Kelleher, and the other honourable members of the special Senate committee and those members who attended at almost each and every occasion for their valuable work.

When I spoke on October 16 on the motion to conduct the pre-study I undertook to address the bill in detail when it arrived in the Senate. I believe that thanks to the work of the special committee, most of us are now familiar with many of the provisions contained in the bill. Nevertheless, I will take this opportunity to provide an overview of the main elements highlighting, in particular, where significant amendments were made in the other place.

Honourable senators, our current law allows us to investigate terrorism and prosecute those who have engaged in various specific activities generally associated with terrorism, including hijacking, murder and sabotage. However, these and other laws are not sufficient. We can today convict terrorists who actually engage in various acts of violence if we are able to apprehend them after their acts. However, I would suggest that after what we saw on September 11, that is not good enough.

We need to be able to protect Canadians and prevent terrorist acts from being committed in the very first place. We need investigative tools that will help us gain information on terrorist groups before they engage in their attacks. We need preventive arrest powers to help us interfere with and destabilize terrorist groups who are in the planning stages of an attack. We need new Criminal Code offences that allow us to convict those who facilitate, participate in and direct terrorist activity. These must include a preventive aspect that applies whether or not the ultimate terrorist acts are carried out. We also need to be able to stop the flow of money that terrorists need to carry out their terrible acts.

These are some of the gaps that Bill C-36 would fill.

Bill C-36 would also implement the two remaining international conventions on terrorism that Canada has not yet implemented. These are the International Convention on the Suppression of the Financing of Terrorism and the International Convention on the Suppression of Terrorist Bombings. For example, the measures under Bill C-36 include new offences under the Criminal Code in both of these areas.

Honourable senators, we also need to enhance our ability to fight hatred and discrimination. The impact of September 11 has not only been felt through increased fear of terrorist activity. It has also led to growing distrust and, in some cases, even acts of violence against ethnic groups and individuals. As the Prime Minister has repeatedly said since September 11, the war in which we are engaged against terrorism is not a war against ethnicity or religion; it is a war against evil, against terror. Nevertheless, we are aware that Canadians of various ethnic groups and religions fear being targeted. We need to send a strong message that behaviour such as destroying or damaging a church, a mosque or a temple is simply not acceptable in Canada. We need to make it clear that using new technologies such as the Internet to disseminate messages of hate is a discriminatory

practice under the Canadian Human Rights Act and will not be tolerated. Bill C-36 would make these very important changes to our existing law.

Honourable senators, the government's goal throughout has been to make the changes necessary to protect Canadians while remaining true to Canadian values. The Minister of Justice has stated on several occasions that the provisions of Bill C-36 comply with the Canadian Charter of Rights and Freedoms.

At the same time, we all recognize that certain aspects of this bill have given rise to concern. The bill authorizes the exercise of powers that, while perhaps not unprecedented in Canadian law, certainly are unusual. As the special Senate committee stated in its report:

The challenge is to find the right balance: ensuring that our law enforcement and security agencies have the tools necessary to protect us and to prevent terrorism before it strikes while not undermining the freedoms that our government ultimately is mandated to protect.

In my view, honourable senators, the bill before you today strikes that balance by providing our law enforcement and security agencies with the necessary tools while ensuring that there are avenues of review and appeal. The bill would allow for the establishment of a list of entities about which there are reasonable grounds to believe they knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity. A number of concerns were expressed, particularly before the special Senate committee, about the possibility that innocent people could find themselves named on the list. The bill always provided a right for the listed person or entity to apply for judicial review of their listing by a judge of the Federal Court right away and if there has been a material change of circumstances. However, now the person or entity would also be able to apply to the Federal Court for judicial review every two years after the list comes up for year review. That is the result of the work of our committee.

• (1520)

I would also like to point out that this list is renamed in the amended bill. Originally it was the "list of terrorists." As the special Senate committee pointed out, this name itself can cause serious harm to persons wrongfully listed. The committee recommended changing the name, and this has been done. It is now the "list of entities."

The committee was also concerned that, with the bill as drafted, someone could be named to the list for having facilitated a terrorist activity, without having any knowledge that this was what he or she was doing. This has been changed. One can only be listed if one knowingly participated in or facilitated a terrorist activity.

There was a great deal of concern in our committee about the proposed certificates that could be issued by the Attorney General under the Canada Evidence Act, the Privacy Act, the Access to Information Act, and other acts, to prohibit the disclosure of certain sensitive information. A number of concerns were expressed that this power was not appropriately circumscribed. Indeed, the special Senate committee recommended that these certificates be made reviewable by the Federal Court. This recommendation was accepted and in the bill before us, these certificates are reviewable by the Federal Court. In addition, the Attorney General would only now be able to issue such a certificate after there had been an order or decision for disclosure in a proceeding. These certificates will now be published in the *Canada Gazette*.

Finally, the special Senate committee recommended that the certificates not be valid in perpetuity. Under the bill before you, the certificates will expire after 15 years. At that time, they can be reissued, but with the same rights of judicial review.

Honourable senators, the bill already contained many avenues for judicial review. These have been enhanced by the amendments passed in the other place.

The other critical piece, however, has been to ensure that there be review of this legislation by Parliament. This was a major focus of concern for the special Senate committee. Under the bill before you today, there are provisions for comprehensive Parliamentary review by committees of both Houses of Parliament within three years. This will be a comprehensive review of the provisions and operation of the act. By the way, the wording has been changed from the original, again to reflect the recommendation by the special Senate committee.

In addition, the special Senate committee asked the Attorney General to table an annual report in Parliament, delineating actions taken under the bill. The type of information requested was detailed in the report, including the number of people detained under the preventive detention provisions, the number arrested without a warrant, and other areas.

The bill before us provides that not only should the Attorney General table such an annual report, but also the Solicitor General. In addition, the provincial attorneys general and ministers responsible for policing will publish such annual reports. The information to be contained is set out in this bill. It includes detailed information about the preventive detention provisions and also the investigative hearing provisions.

Honourable senators, the preventive detention and investigative hearings provisions were clearly among the most controversial aspects and provisions of this bill. These were the subject of discussion by many witnesses, both before the special Senate committee and, to be fair, in the other place, and certainly within the commentaries provided by the professional media, letters to the editor, guest columns and so on. The information

made public under these reports will enable honourable senators and members of the other place to monitor whether, in fact, the powers provided under these sections are the right ones for the job, whether the powers are, in fact, being used or overused, and whether we have the balance right.

Honourable senators, that brings me to the sunset clause. This issue has, of course, received a great deal of attention, both here and in the media. The special Senate committee recommended a sunset clause for the whole bill, recognizing that the provisions that implement our obligations under international conventions must of course not be subject to sunset provisions. The bill before us today does not implement that recommendation in its entirety. It does, however, provide a sunset clause with respect to these particularly controversial new powers.

Honourable senators, in my view, this arrangement represents an appropriate balanced approach. For example, I would not want the new criminal offences to expire in five years. If someone knowingly facilitates a terrorist activity, or knowingly instructs someone to carry out a terrorist activity, I want that person charged and prosecuted under the Criminal Code. I do not want those provisions to expire.

Under the proposed sunset clause, the controversial new powers to conduct investigative hearings and preventive detention will expire in five years, unless they are extended by a resolution of both Houses of Parliament. This will allow both Houses of Parliament to take a serious look at how these provisions have operated, with the benefit of the information provided in the annual reports. At that time, the members of this chamber and the other chamber can decide whether continuation of these powers is appropriate and necessary.

Honourable senators, I am confident that, armed with the information that will be made public under this bill, we will be well positioned to conduct our comprehensive review within three years, and then to assess whether to extend the preventive detention and investigative hearings provisions in five years.

There are other important amendments to the original bill as well. The definition of "terrorist activity" was discussed extensively, both before the special Senate committee and in the other place. Of particular concern was the paragraph dealing with acts or omissions that cause serious interference with or serious disruption of an essential service, facility or system. That paragraph included an important exception for lawful advocacy, protest, dissent or stoppage of work.

The intent of this exception was clear. However, concern was expressed by the special Senate committee and others, but primarily by us, that including the word "lawful" could cause problems, for example, with respect to an illegal strike. The committee recommended that this word be deleted, and the provision was amended in the other place.

The special Senate committee also recommended that a non-discrimination clause be added to the bill to address concerns that the definition of "terrorist activity" could be used to target ethnic or cultural communities in Canada. The bill before us includes such a clause, providing for greater certainty that the expression of a political, religious or ideological thought, belief or opinion does not come within the definition of a "terrorist activity."

Honourable senators, as you can see from this overview, the government has worked hard to respond to concerns expressed in this place, so that Canadians have a bill that enables our law enforcement and security agencies to work to protect us from terrorist activities while remaining true to what defines us as Canadians. It is truly all about freedom, but we cannot be free if we live in fear of terrorism.

I believe this bill strikes a good balance. I look forward to the deliberations of the special Senate committee as it studies the bill on a clause-by-clause basis. I ask you to support speedy passage of this bill to committee. I wish the committee good luck in its study, which I know will be intensive and broadly based.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, if it is the government's intent to have this bill sent to committee as expeditiously as possible, certainly on this side there is no objection, as in effect the principle of the bill, which is what second reading is all about, was given unanimous support by the Senate a week ago when the report of the special committee studying the subject matter of Bill C-36 was put to a vote. That report contains a number of recommendations that, while in large part ignored by the government, nonetheless reflect the wishes of the Senate — recommendations. I want to emphasize, that were endorsed after the government amendments were made known. The special committee will then be called on to study Bill C-36 itself and must do so within the context of these recommendations that, I repeat, have received unanimous support here.

• (1530)

No doubt, more than one witness will attempt to convince the committee that some of its recommendations are impractical or have been adopted in the other place, if not word — for word at least enough to meet their intent. The fact remains that the two most important recommendations, to my mind anyway, have been ignored: an overall five-year sunset clause and the appointment of "an Officer of Parliament to monitor, as appropriate, the exercise of powers provided in the bill."

The best argument I have found for an expiry clause and for an officer of Parliament is by referring to the War Measures Act. It was passed and given Royal Assent within a few short days, with very limited and even superficial debate in both Houses during an emergency session of Parliament in August 1914. The act was never intended to be used for purposes other than as a significant part of the war effort. In fact, it remained in force for

nearly 75 years and was applied twice after: during World War II and during the October 1970 FLQ crisis.

Let me quote from an article in the *Queen's Law Journal* from the spring of 1993 by Patricia Peppin, Assistant Professor, Faculty of Law, Queen's University, who has done a thorough study of the use of the War Measures Act. The article, which refers to the year 1970, states:

Immediately after the War Measures Act was invoked, the police conducted 1,624 raids and arrested 350 people. Under the regulations and the successor legislation, 465 people were arrested and two re-arrested, for a total of 467 arrested as of March 15, 1971. Of these, 403 were released without charge. Against the 62 remaining people, 86 charges were laid under the War Measures Act and 19 under the Criminal Code. Forty-four pleaded not guilty and either were found not guilty, or the Crown entered a *nolle prosequi* in the record.

That means that the Crown was not able to go forward with the charges.

Thirteen people pleaded guilty; five pleaded not guilty and were found guilty. A total of 18 people were found guilty.

The point of bringing this up is obvious, I think. An act that was written in haste to cope with unprecedented circumstances was not allowed to lapse, with the result that it was used for purposes never intended, not even envisioned by its authors, against innocent Canadians without any accountability to Parliament. If ever there was an argument for a sunset clause in a bill that gives such wide discretionary powers to the government and that in the opinion of many seriously challenges the Charter, surely it has just been given. History, in our case, not only must be not be repeated, it must not even be given the slightest opportunity to be repeated.

Bill C-36, as amended, continues to allow the government extraordinary discretion in its application, as what has been added to the original bill in terms of a sunset clause touches only two aspects — preventive arrests and investigative hearings — while any judicial review and ministerial reporting are insignificant compared to an officer of Parliament acting as Parliament's watchdog, independent of the executive in the monitoring of the act.

The Minister of Justice agreed to the Senate committee's recommendation that a certificate issued by the Attorney General be, in her words, "renewable by a judge of the Federal Court of Appeal." The courts normally interfere with the exercise of ministerial discretion only when bad faith or improper purposes on the part of a minister can be demonstrated. While judicial review of any sort is welcome, upon reflection I can only wonder if the judiciary is anxious about being or even will accept to be involved in any review that involves a political decision, which describes most ministerial decisions.

In support of that concern, I want to quote from a Supreme Court decision in *Attorney of General of Canada v. the Attorney General of British Columbia* in 1991. The Supreme Court stated:

...the Court's primary concern is to retain its proper role within the constitutional framework of our democratic form of government...In considering its appropriate role the Court must determine whether the question is purely political in nature and should, therefore, be determined in another forum or whether it has a sufficient legal component to warrant the intervention of the judicial branch.

If any judicial review envisioned by Bill C-36 is to be limited by the Supreme Court's opinion, one may well ask what its value is if it can only be based on alleged bad faith and improper purposes. The Canadian Judicial Council's views on the judicial review components in Bill C-36 are essential, as it appears to me that it will involve decisions the Supreme Court has advised "should be determined in another forum."

Pre-study did not allow an evaluation of a number of clauses unrelated to anti-terrorism. I suppose it can be argued that while some of them do not seem to relate directly to combating terrorism, they assist in an indirect manner; for example, those relating to economic espionage and the expanded definition of hate crimes. However, the proposed amendment to the Canada Evidence Act is so extensive that it cannot be allowed to pass unnoticed. It states, in effect, that any official — not just a minister of the Crown as at present — may object to the disclosure of information in any judicial proceeding and that if an objection is made the court "shall ensure that the information is not disclosed..."

One cannot take lightly the withholding of evidence in any case as all parties in the proceedings are affected, as is the administration of justice. I want to make it clear that this is a proposed amendment to the Canada Evidence Act, and so it can be used for any purpose, not just for anti-terrorist ones. Its ramifications are such that the government should be reprimanded for in effect burying an amendment in an omnibus bill rather than reopening the Canada Evidence Act and allowing a proper debate of the amendment by itself.

To stress why this should be of concern to all parliamentarians, and to all Canadians for that matter, what is the definition of "official"? According to the amendment, one has to refer to section 118 of the Criminal Code, which says:

"official" means a person who

(a) holds an office, or

(b) is appointed to discharge a public duty;

In effect, there are hundreds of thousands of people in this country who can act under this amendment and ask a court that information in a particular case not be disclosed.

There are two general questions that the government is obligated to answer: What powers in Bill C-36 are not available in current legislation, such as in the Criminal Code; and why is the Emergencies Act, which gives the executive powers similar to those in the late and unlamented War Measures Act, not the principal tool in the government's anti-terrorism program?

While I do not have the complete answer to the first question, although the Leader of the Government did give a partial answer to it, I suspect that I know the answer to the second. The Emergencies Act includes provisions for parliamentary involvement and oversight, and even a veto over its application by the executive. Sadly, to date anyway, the government is not prepared to accept this in Bill C-36. Yet the committee's recommendation for a sunset clause and parliamentary oversight through an independent officer has been supported by this chamber, and such an endorsement cannot be ignored by the committee or by this chamber when it comes to decide on Bill C-36 itself.

During the special committee's hearings, the Minister of Justice on more than one occasion indicated that no final decision on Bill C-36 would be taken until she had studied its report, along with other representations. In her presentation on the amendments, she credited the Senate committee for some of the changes that were eventually adopted in the other place. Such openness is to be commended and hopefully will be reconfirmed when the committee begins its hearings on the bill itself. If honourable senators are being told that Bill C-36, to put it bluntly, is a done deal and that Senate amendments will not be entertained, that renders meaningless the testimony of witnesses with legitimate concerns as well as the opinions of committee members and brings into question the purpose of the Senate.

• (1540)

Yesterday's press release, prepared by the offices of the Minister of Justice and the Solicitor General, even before the vote on Bill C-36 was held in the other place, does not augur well. It is headed: "Federal and Provincial/Territorial Justice Ministers work together to fight terrorism," and includes no less than five specific references to Bill C-36, as if the bill were already in force. Nowhere, not even as a footnote, is there an indication that the proposed legislation is still before Parliament.

The Minister of Justice, as sponsor of the bill, must reassure us that she is still open to amendments, whatever artificial deadline the government seems to want to impose. I am sure that we can all agree that the authority of Parliament and the safeguarding of the rights and freedoms of all Canadians must come before the need to respect the holiday adjournment period of the House of Commons.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Carstairs, bill referred to the Special Senate Committee on Bill C-36.

FEDERAL NOMINATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Cohen, for the second reading of Bill S-20, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.—(*Honourable Senator Robichaud, P.C.*).

Hon. Anne C. Cools: Honourable senators, the Honourable Senator Robichaud has yielded the floor to me.

Honourable senators, I rise to speak briefly to Bill S-20, which is Senator Stratton's bill to provide transparency and objectivity in the selection of individuals and candidates to be appointed to certain high public positions. Senator Stratton is ambitious and zealous in attempting to attain objectivity and transparency in appointments to high office. From what I can see, this is a most interesting bill and a most interesting and parallel set of questions.

Honourable senators will know that one of the issues in which I have taken substantial interest here in the chamber is the phenomenon of Royal Consent to bills which affect the Royal Prerogative in particular. My interest in this bill stems from that. The community of law for the entire country is centred in the Queen, particularly that section of the law that pertains to appointments to high office. All of us who sit in this chamber were summoned by Her Majesty to sit herein.

I will not develop my particular comments more fully today, but they flow from Senator Joyal's intervention of June 5, 2001, when Senator Joyal rose on a point of order. Unfortunately, I was not in the chamber when Senator Joyal spoke, so I could not speak to the point of order, but honourable senators are aware of my thoughts on the need for the Royal Consent to bills.

On October 25, 2001, the Honourable the Speaker ruled clearly, unquestionably and beyond any controversy, and stated the following:

Having now arrived at the conclusion that Bill S-20 affects the prerogative, I must conclude that it requires the Royal Consent.

Honourable senators will know that those of us who are concerned about this issue have been raising these issues in

respect of certain bills for some years now. In this particular instance, the Honourable the Speaker made a decision that the bill requires the Royal Consent.

What remains unanswered, however, is how Senator Stratton proposes to obtain the Royal Consent. Her Majesty's ministers are assumed to be known and chosen by herself, and therefore are known to have a ready access to Her Majesty. However, that is not the case in the instance of a member of the opposition, although there are many precedents on the record in the jurisprudence that speak to the entire issue of members of the opposition obtaining the Royal Consent.

Honourable senators, it is my intention to develop this matter more fully in a few days. There is one particular document that I am awaiting, and as soon as I obtain that document, I will proceed.

On motion of Senator Cools, debate adjourned.

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:

That the Senate of Canada recommends that the Government of Canada recognize the date of August 15th as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(*Honourable Senator Bryden*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to speak in support of this motion.

Honourable senators who have spoken in the debate to date have canvassed historical and cultural considerations. This afternoon, I would like to reflect on some dimensions of the faith journey of the Acadian people and their devotion to the Virgin Mary, whose Assumption is celebrated on August 15. In many ways, it was this common devotion which established the close relationship between the Acadian and Irish communities in Atlantic Canada — a relationship which finds expression in names such as Sean LeBlanc, Eugene O'Leary or, indeed, Noël Kinsella.

• (1550)

Honourable senators, my maternal grandmother was Lucie Bernard, a descendant of the Bernard family of Malpeque on the Île de Saint Jean, now Prince Edward Island, and one of the eight Acadian families which, in 1799, founded Tignish. But I digress.

The choice of August 15 as the day of the Fête Nationale des Acadiens et Acadiennes was not by chance. Rather, this was a deliberate decision taken by those participating at the first Acadian National Congress held in Memramcook, New Brunswick, in 1881.

[Translation]

The celebration of August 15 is a tradition that is solidly rooted in the hearts of the Acadian people. A celebration that is religious and secular both, it defines the very identity of the Acadian people, who chose it precisely in order to publicly affirm their difference and underscore their considerable contribution to the building of what is now Canada.

The choice of the celebration of the Assumption of the Blessed Virgin was not mere chance. It has connections with the very origins of Acadia, which was France's first permanent settlement in North America, on Île Sainte-Croix in what is now New Brunswick, in 1604, and at Port-Royal the following year. This is a distinction of which Acadians are justly proud.

A place name that is still in use in Nova Scotia, Baie Sainte-Marie or St. Mary's Bay, was selected by none other than Samuel de Champlain on May 24, 1604, indicating just how far the devotion to Mary dates back in Acadian history.

This was even before France was consecrated to the Virgin Mary by Louis XIII, on August 15, 1638. Louis XVI followed his father's example, and did the same in 1650. That date became a "fête nationale" in France long before that term was actually invented. Even today, the Assumption continues to be a statutory holiday in the very secular French Republic.

The first parish dedicated to Our Lady of the Assumption is also found in Acadia, as it was Monsignor de Laval who dedicated the parish of Port-Royal as such in 1678; this was a first in Canada.

There are numerous signs of the popular devotion to the Virgin Mary in Acadia. A devotion that natives shared and continue to share to this day.

Countless places in the former Acadia have borne the name of the Mother of God since the earliest times. Despite the ravages of time, or perhaps because of them, this devotion remains deeply embedded in the religious, social and cultural heritage of Acadia. In fact, this devotion has even grown during the 19th and 20th centuries.

It was therefore no surprise when Acadians adopted Our Lady of the Assumption as patron saint in Memramcook in 1881, during their first National Congress. Some 5,000 people took part in this first large manifestation of the Acadian resurgence.

The gesture made by Congress delegates was as much political as religious, as there were two clashing factions. On the one hand, there were those who wanted the Feast of St. John the Baptist, the national feast day of French Canadians, to be the national feast day for Acadians. On the other hand, there were those who ardently believed, for the historical reasons given earlier, that Our Lady of the Assumption should become the patron saint of Acadia, and that August 15 should be the Fête nationale de l'Acadie.

Debate on this basic issue was courteous, certainly, but long and heavy. It was not a matter of rejecting Quebec, a friend and neighbour as it has been and continues to be, but of expressing once and for all the specificity of Acadian identity. The historical reasons were strong, as we know. The political reasons were equally so.

The president of the Société Saint-Jean-Baptiste of Quebec City, J.P. Rhéaume, on behalf of French Canadians, told those attending the congress, and I quote:

You have given a truly national and patriotic quality to your convention by affirming your faith and your nationality, but what is most admirable is the practical aspect of it. You have understood that the finest demonstrations are nothing without practical work. We are therefore pleased, gentlemen, to see that the work of your convention will be useful and longlasting.

One of these was the choice of Assumption as the national feast day of the Acadian people. It was the energetic Father Marcel-François Richard, future prelate, the parish priest of Rogersville, in New Brunswick, who became the spokesperson — better, perhaps, the leader — of those who preferred the Assumption to St. John the Baptist. He brilliantly set out and defended the proposal and won the day without ruffling the feathers of the opposing clan.

Future Senator Pascal Poirier agreed with Father Richard. It was he who told the national congress, and I quote:

With the feast of St. John the Baptist as our national feast day, we would be indistinguishable from Canadians. Do we not want to remain who we are and, furthermore, have people know who we are?

This summed up magnificently the purpose of the first congress, which lay the foundations for the spectacular revival of the Acadian people in the Maritimes. The next congress, held in Miscouche, Prince Edward Island, in 1884, completed the work started in 1881, with the adoption of a national anthem, the *Ave Maris Stella*, a flag bearing the star of the Virgin Mary, patron saint of the sea and symbol of hope, and other symbols that still define today the exciting presence of a Canadian community that had succeeded in preserving its rich heritage.

This heritage comprised many religious communities, for women and men, without whom the French tradition would not have survived, despite the best of efforts. All of them, whether they were involved in hospitals or education, with their special devotion to the Virgin Mary, the patron saint of Acadia, contributed through their heroic efforts to the blossoming and growth of modern Acadian society.

The late Father Clément Cormier, C.S.C., one of the greatest Canadians of his day, and with whom I had the unique privilege of working on the New Brunswick Human Rights Commission, gave heartfelt praise for the dedication of these religious communities when he said:

• (1600)

If these religious communities had not existed, if they had not fulfilled their role in small communities, I am convinced that the Francophonie in the Maritime provinces would not have survived.

The founder of l'Université de Moncton, himself a very great Acadian educator, spoke from experience and authority.

Honourable senators, the flag and symbols adopted at the 1884 Acadian national congress were officially recognized as Canadian symbols on June 30, 1995, by our former colleague the Governor General of Canada, the Right Honourable Roméo LeBlanc.

In order to complete a process begun in 1881, we should now officially recognize, at the national level, August 15 as a holiday for Canada's Acadian people.

In 1881, at the Memramcook congress, Sir Hector Langevin, then Minister of Public Works in the government of Sir John A. Macdonald, told Acadian delegates:

You carry with you the sympathies of the past and the hopes of the future.

Honourable senators, the hopes of the future to which Sir Hector Langevin was referring were fulfilled beyond all of the Acadians' expectations of 120 years ago. This anniversary is of national importance. It should not go unnoticed. What better way to mark it than to adopt Senator Losier-Cool's motion?

The Parliament of Canada, which benefitted from the presence of remarkable Acadians, both in this chamber and in the other place, now has an opportunity to solemnly follow up on the wish expressed by Acadians. I will gladly support this initiative, because in some ways it is an official recognition of the vigour of the Acadian community, which not only survived a disaster that some thought would be fatal, but which also, with courage and determination, found its place in the modern world.

Hon. Laurier L. LaPierre: Honourable senators, being an Acadian at heart, I move the adjournment of the debate.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, when Senator Bryden moved the adjournment of this debate, he said that he had no objection if someone wished to address this inquiry this week.

I therefore ask for the honourable senators' consent to have the adjournment of the debate remain in his name.

On motion of Senator Robichaud, for Senator Bryden, debate adjourned.

[English]

ASIAN HERITAGE

MOTION TO DECLARE MAY AS MONTH OF RECOGNITION— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Carney, P.C.:

That May be recognized as Asian Heritage Month, given the important contributions of Asian Canadians to the settlement, growth and development of Canada, the diversity of the Asian community, and its present significance to this country.—(*Honourable Senator Cools*).

Hon. Anne C. Cools: Honourable senators, in consultation with Senator Poy, I have informed her that although I want to speak to her motion, I will not be able to do it for some time yet. I have informed the Honourable Senator Poy, as I now inform the chamber, that if she is prepared to make her reply and have the question put, that is all right with me. I am prepared to yield the floor to her.

The Hon. the Speaker: Does the Honourable Senator Cools wish to leave this item standing in her name?

Senator Cools: Honourable senators, since I will not be here next week, Senator Poy would find herself in an awkward position if she were to rise to bring on a vote and I were not here to yield to her. Perhaps we could let the item revert to Senator Poy. She would then have the right of reply.

The Hon. the Speaker: Honourable senators, is it agreed that the motion stand in the name of Senator Poy?

Hon. Senators: Agreed.

Order stands.

[Translation]

INTELLECTUAL PROPERTY RIGHTS OVER PATENTED MEDICINES

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Finestone, P.C., calling the attention of the Senate to three diseases which are sweeping the developing world and which draw many to ask whether intellectual property rights over patented medicines have not taken precedence over the protection of human life.—(*Honourable Senator Fraser*).

Honourable Joan Fraser: Honourable senators, like those who preceded me in this debate, I thank Senator Finestone for her initiative. In a country as rich and privileged as ours, it is easy to forget the scourges which afflict millions of people the world over.

As she has done throughout her career, Senator Finestone forces us to think about these millions of disadvantaged people and to reflect on our obligations to our fellow citizens on this fragile planet.

[English]

Honourable senators, I speak as someone who strongly supports the protection of intellectual property rights on both moral and practical grounds. On moral grounds, it seems to me simply wrong to argue that the fruits of someone's intellectual work do not belong to that person or corporation, just as the fruits of their physical labour do. If a carpenter builds a table, it belongs to him. If a philosopher writes a book, it belongs to her, and so on. The creator of a work owns it, and is free to sell it on the terms he or she chooses, if they can find a buyer.

[Translation]

On practical grounds, it seems just as obvious to me that in our political and economic system, we must respect the intellectual right of pharmaceutical companies, because this is the only way for us to be sure that they will do the necessary research to discover the new drugs the world needs. This research and the subsequent process of developing a new drug can take years. For each useful discovery, there will be many failures. All this is terribly expensive, and companies will simply not embark on the process unless they are certain that they will ultimately be able to profit from their efforts. If companies do not do this research, who will? Not governments. Not universities — they do not have the necessary financial resources. In our system, this role falls to pharmaceutical companies.

[English]

This does not mean, however, that states should not intervene when market mechanisms are clearly failing to operate in the public interest — and it is clearly not in the public interest for millions of people to be deprived of drugs that they desperately need, solely because the drug companies insist on charging prices that are utterly unaffordable in most of the developing world, and the drug companies can make that insistence stick because of the patent system.

Previous speakers in this inquiry have noted the pressures now being exerted on pharmaceutical companies to make some drugs, notably those used to control AIDS, available at low cost in some of the poorest African countries. The companies have agreed to do so in some cases, though implementation of those agreements still appears to be, at best, spotty. Surely, this difficulty should not have to be addressed on a laborious case-by-case, country-by-country basis. Indeed, it seems to me that now would be an ideal time for Canada to spearhead a new international effort to establish a broad system that would exploit the exceptions to patent protection that are already allowed for under the agreement on Trade Related Aspects of Intellectual Property Rights, known as TRIPS, and about which previous speakers have spoken so informatively. As those speakers have already noted, the rules specifically allow for exceptions in cases of public health emergencies, and if ever there was a public health emergency, surely it is the devastating scourge of AIDS in Africa.

• (1610)

I think that now is an excellent time for such an initiative because this is one of the comparatively rare moments when people in the developed countries in general, and the United States in particular, are forced into awareness of the way in which our world is interconnected. Isolationism is, however briefly, out of fashion just now. We should try to take advantage of the moment in ways that go beyond simply joining in military alliances, important and crucial though those military efforts are. It surely would not be possible to establish new international rules quickly — that kind of thing always takes years — but it might be possible to prod the industry into doing the right thing voluntarily now, in all of the world's poorest countries, if enough governments made it plain that the alternative was to face more stringent rules in the future. I can think of no country with better credentials, in both the developed and the developing worlds, to promote the effort than Canada.

There is, however, another point that I should like to raise, and that is the danger of focusing all of our attention on the question of drugs, important though that is. We in the Western World often have a tendency to look for single solutions to complex problems, and I would not want us to fall into that trap here.

In her speech, Senator Finestone mentioned three terrible diseases that are raging in the Third World: AIDS, tuberculosis, and malaria. The spreading of all three are diseases can be directly linked to conditions that have nothing to do with pharmaceuticals. In the case of AIDS, while we must do everything we can to help its victims, including particularly the millions of children it has orphaned, we must also redouble our efforts at education about AIDS and about the need for safe sex practises. In many countries, this requires a sustained effort to change some of the most deeply rooted social customs and attitudes. It is difficult, time-consuming and often frustrating work.

To focus only on drugs for the victims, whether for AIDS or the other diseases, is like tackling the problem of family violence by focusing on the availability of bandages. In the cases of tuberculosis and malaria, the elements that need sustained attention, along with drugs, are social and environmental. We know, and have known for many years, that TB spreads most easily in conditions of poverty, which bring in their train overcrowding, poor hygiene and malnutrition. Yes, we need to ensure that victims get medical treatment and that people are immunized, where that is possible, but it is also true that the more we do to eliminate poverty, the more we do to eliminate the conditions in which TB can run free. Honourable senators, if you think this is an argument for increasing our foreign aid, you are absolutely right.

As for malaria, its spread is almost entirely due to environmental factors. Malaria is spread by mosquitoes. If you eliminate the mosquitoes and the conditions in which they thrive, you will also eliminate malaria.

[Translation]

Honourable senators, as it happens, I have some personal experience of this terrible disease. Because of my father's work, I spent most part of my childhood in a small South American country known then as British Guyana, which is Guyana today. For centuries, malaria was endemic to this country, and to all of the countries near the equator. Thousands fell victim to the disease, as continues to be the case in many countries around the world.

[English]

Yet I did not get malaria. Nor did my family. Nor did anyone I knew in Guyana, rich or poor. We did not get malaria because by the time my family arrived in 1947, malaria had been eliminated, wiped out, in Guyana. It was eliminated through two things: first, the widespread use of DDT, and second, sustained attention to obvious environmental steps like not leaving standing water where mosquitoes can breed near houses. There were still millions of mosquitoes in Guyana when we arrived there, but no malaria.

As far as DDT is concerned, we all know about the environmental dangers that it turned out to cause. I must say that since my own life may have been saved by it, I have never managed to muster quite the outrage about it that many people came to feel. I am obviously not suggesting a return to its widespread use. I do, however, think there is a lesson here about the need to focus on prevention as well as cures.

Much is already being done. Modern science and technology have found safer insecticides such as pyrethroids that can reduce child mortality from malaria by one-third if they are used to impregnate bed nets or curtains. A Multilateral Initiative on Malaria was signed in Dakar in 1997, and international research continues on vaccines, medications and methods to control malaria-bearing mosquitoes. Yet malaria continues to spread, and as with so many other diseases, drug-resistant strains are emerging.

It occurs to me, honourable senators, that one promising avenue ought to be research on biological agents. Any of you who are gardeners know, for example, that you can buy ladybugs by mail order to attack a number of the pests that lay waste to flowering plants. You can buy more sophisticated biological treatments by mail order, for example, specialized organisms that will attack and defeat some of the grubs that devastate lawns. If we can find ways to save rose bushes and golf courses by mail order, why can we not discover ways to eliminate the parasites that cause malaria? I can think of few more worthy recipients of major public funding, whether as part of our foreign aid spending or as part of Canada's admirable efforts to boost research and development in the field of the health.

To say this is easy, of course. Doing it is not so easy. The basic point I wanted to make today is quite simple. The problems of overzealous patent protection and drug pricing to which Senator Finestone has drawn our attention are real and need public attention. However, the real problem, the root problem, is not patents or prices; it is the diseases themselves. We do need to see that the drugs can be made widely available in the Third World, but that is only the first half of the job. The second half is to work on defeating the diseases themselves and the conditions in which they flourish.

On motion of Senator LaPierre, debate adjourned.

THE NATIONAL ANTHEM

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(Honourable Senator Cools).

Hon. Anne C. Cools: Honourable senators, I rise to speak to this debate on Senator Poy's inquiry calling the attention of the Senate to the national anthem. This inquiry is about more than calling the attention of the Senate to the national anthem. This inquiry is about an embryonic idea to at some point in time bring forth a proposal altering the words of the national anthem. This issue was widely publicized during the summer months, and it is my intention to speak to this subject matter.

I believe that anthems are usually created as pieces of art and then adopted in practice by nationals, usually in day-to-day living, singing and celebratory occasions, and then over time, after they have ripened and matured, they are adopted as national anthems.

• (1620)

A national anthem is not something that should be changed frequently. I intend to oppose Senator's Poy's proposal to change the national anthem. I feel great patriotism in the anthem as it stands. I repudiate any notion whatsoever that the anthem as it stands is oppressive to women, or that it is in some way exclusive of women. I reject that notion at the outset.

Honourable senators, the lyrics of our anthem begin as follows:

O Canada, our home and native land.

True patriot love

In all thy son's command.

It seems the words "In all thy sons command" have been found by many senators to be objectionable. I submit that somewhere in this country there is someone who would object to every single word. It becomes then a never-ending proposition.

Honourable senators, I was not born in this country. Some females may want to change the words "In all thy son's command." Perhaps people who were not born in this country may want to change the term "native land." I would submit to honourable senators that it is an endless proposition. I am no less a Canadian because I was not born in this country. Neither is one who was born in this country any better a Canadian than I am.

I belong to that generation of individuals who, upon moving to Canada — for me that was in 1957 — never felt for a moment that I was going to a foreign country. In my child-like mind, in my peculiar brain at the time, I just thought I was moving from one part of the British empire to another part.

An Hon. Senator: Terrible!

Senator Cools: Terrible? I think it is absolutely glorious and wonderful. That is my heritage. Do you believe in people's heritage. My heritage is colonial British.

I wanted to make the point that the opening up of national anthems is a very serious matter and one that is potentially extremely divisive.

The real issue that I want to address in my remarks, which I shall continue soon, is the treatment of women in respect of patriotism and other related areas. I am concerned about what I would consider to be enormous historical revision that has taken place on so many of these questions.

To whet the appetites of senators for what I shall say when I choose to complete my remarks, I want to go to the famous Persons case. As honourable senators know, I was not enthusiastic of the erection of the statues of the Famous Five. I would like to put on the record today an oft-quoted excerpt from the Persons case in 1930, being *Edwards v. the Attorney General for Canada*, as adjudicated by the United Kingdom Judicial Committee of the Privy Council. When I rise again, I will begin my remarks from these words of Lord Sankey, the Lord Chancellor:

The exclusion of all women from public offices is a relic of days more barbarous than ours, but it must be remembered that the necessity of the times often forced on man customs which in later years were not necessary.

Honourable senators, there is great misunderstanding about the barbarism that Lord Sankey was talking about. He continued:

Such exclusion is probably due to the fact that the deliberative assemblies of the early tribes were attended by men under arms, and women did not bear arms.

That is the truth; that is the barbarism. Lord Sankey continued:

The likelihood of attack rendered such a proceeding unavoidable, and after all what is necessary at any period is a question for the times upon which opinion grounded on experience may move one way or another in different circumstances.

I just wanted to begin my contribution to this debate by putting this material out for all honourable senators to consider: The barbarism being referred to was the barbarism of earlier eras of history when men had to be armed and prepared to protect their families and their communities because of the ever-present risk to security, a risk to life and limb. It is unfortunate that, in these days, we tend to misinterpret much that has been said.

The width of the aisles in this chamber were determined in previous times by a need to keep swordsmen from fighting each other. Honourable senators, it is a terrible disservice to all of those war dead who went out in previous generations to fight for this country. That is why I will not be supporting any attempt to change the words of the national anthem.

Honourable senators, having said that, I move the adjournment of the debate.

Senator Taylor: If the item is to fall off the Order Paper in any event, I would like to speak.

Senator Cools: I have moved the adjournment of the debate.

Senator Taylor: You have just spoken. Have you not used up your time?

The Hon. the Speaker: Honourable senators, Senator Taylor has requested the floor. Senator Cools is in the process of making a speech. She has five minutes left in which to complete her speech. She is moving a motion in this chamber to adjourn the debate in her name until the next sitting, with a view to completing her remarks at that time.

It is moved by the Honourable Senator Cools, seconded by the Honourable Senator LaPierre, that further debate on this inquiry be adjourned to the next sitting of the Senate in the name of Senator Cools for the balance of her time.

Is it your pleasure, honourable senators, to adopt the motion?

On motion of Senator Cools, debate adjourned.

QUESTION OF PRIVILEGE

The Hon. the Speaker: Honourable senators, we have now come to the end of our Order Paper. On Tuesday past, Senator Cools raised a question of privilege. I indicated that I would entertain further comment on the question of privilege when Senator Jaffer was in the chamber. This would be Senator Jaffer's opportunity, if she wishes, to make a comment.

• (1630)

Hon. Mobina S. B. Jaffer: Honourable senators, I wish to speak to the motion. I have no problem with the heading being changed, but I would ask that the heading be changed to "The Tragic Death of Aaron Webster."

I also should like to state that if I have offended anyone by my statement, it was not my intention. I sincerely apologize for that.

Hon. Anne C. Cools: Honourable senators, Senator Jaffer has apologized and I think that the matter should rest.

The Hon. the Speaker: A point of order has been raised. Does Senator Lynch-Staunton have a point of order?

Hon. John Lynch-Staunton (Leader of the Opposition): There is nothing in our rules that provides for debate on a question of privilege to continue over a period of three days. It is highly unusual for His Honour to invoke, according to the *Journals of the Senate*, rule 18(3), which quite specifically says that as soon as the Speaker determines that sufficient argument has been adduced to decide the matter, we continue with the next item of business.

There is nothing in the rules that indicates that we can suspend the debate and then resume it at another time. We have allowed

this matter to go on because it was a delicate matter. Senator Jaffer has made her explanation. That, I would hope, is the end of it, and not a precedent.

Senator Cools: I had indicated earlier that the matter is essentially done with. Senator Jaffer has apologized.

Your Honour, I am trying to tell you I am withdrawing. Maybe you do not want to hear it.

The Hon. the Speaker: Senator Cools, I think you said that you are withdrawing the matter.

Senator Cools: Let me finish my few words.

The Hon. the Speaker: I think the concern on the point of order is that the comments on the matter of privilege are perhaps being misused in the sense that comment on the question of privilege is being used to do more than comment on a question of whether or not privilege has been breached.

If Senator Cools wishes the floor to ask to withdraw her question of privilege, I will give it to her, but I believe the matter of order is a good one. I could rule on whether it is in order to give another senator an opportunity to be heard. If Senator Lynch-Staunton wishes me to comment on that matter, I will, but we are at the stage where I believe Senator Cools wishes to withdraw. I should like to hear discussion on that matter, in which case I would agree. Otherwise, if a ruling is requested, then I would have no choice but to close the matter for comments and make a ruling.

Do you wish to withdraw, Senator Cools?

Senator Cools: That was my intention. What is before us right now? Is Senator Lynch-Staunton's point of order before us or are we back to the question of privilege?

The Hon. the Speaker: Senator Lynch-Staunton has raised a point of order. I do not believe there is any lack of order. He is entitled to get up and raise a point of order. He has. He has not asked for a ruling. If he wants me to, I will rule on it.

However, I think we are anxious to terminate this matter if we can. As I understand it, Senator Cools wishes to withdraw her question of privilege. Is that correct, Senator Cools?

Senator Cools: Honourable senators, no, one does not simply say yes. One has to make a statement to the chamber. I cannot simply say yes as to a question His Honour has posed. There is no provision in the rules for what is happening now. As a matter of fact, there is no provision in the rules for a point of order under a question of privilege. There is no provision at all in the rules for what is happening. What has happened here is that a discussion on privilege was postponed without leave of the Senate. What is happening is entirely unusual and unprecedented. I was trying to say earlier that there is nothing before us.

The Hon. the Speaker: I am sorry.

Senator Cools: I want to withdraw.

The Hon. the Speaker: Senator Cools has indicated that Senator Lynch-Staunton had no point of order. I am not sure whether there is anything in the rules one way or another, but a point of order under our rules can be raised. The point of order was that there was a question in Senator Lynch-Staunton's mind as to whether the comments on the question of privilege could be extended over a period of time. He has not asked for a ruling on that matter. I indicated earlier that I would await Senator Jaffer's return to the chamber before dealing finally with this matter. In that Senator Cools is continuing to address the question of privilege, I probably should, at this point, point out that I believe enough has been said and it is in the discretion of the Chair as to when the matter is finished.

The longer quote from one of our recent texts, Marleau and Montpetit, on page 125, is as follows:

A Member recognized on a question of privilege is expected to be brief and concise in explaining the event which has given rise to the question of privilege and the reasons why consideration of the event complained of should be given precedence over other House business. Generally, the Member tries to provide the Chair with relevant references to the Standing Orders, precedents and citations from procedural authorities. In addition, the Member demonstrates that the matter is being brought to the House's attention at the first opportunity. Finally, the Member should state what corrective House action is being sought by way of remedy and indicate that, should the Speaker rule the matter a *prima facie* question of privilege, he or she is prepared to move the appropriate motion.

All of that has happened.

The Speaker will hear the Member and may permit others who are directly implicated in the matter to intervene. The Speaker also has the discretion to seek the advice of other Members to help him or her in determining whether there is *prima facie* a matter of privilege involved which would warrant giving the matter priority of consideration over all other House business. When satisfied, the Speaker will terminate the discussion.

I should like to terminate the discussion. However, if Senator Cools wishes to withdraw her question of privilege, it is in order for her to do that, but it is not in order to continue to comment on the matter of privilege. That is why I put the question and I agreed it is in order.

Does Senator Cools wish to withdraw her question of privilege?

Senator Cools: I rise and I address honourable senators. I have been trying to do this all day. The only reason the issue was not withdrawn is that certain extraordinary steps were taken in

respect of postponing the discussion. I am trying to say that Senator Jaffer has apologized. The matter is satisfied.

The Hon. the Speaker: Senator Cools, I am at the point where I believe this is a matter on which I must rule. I do not wish to give further time to this issue. I have heard enough in terms of making a decision as to whether there is a breach of privilege.

Let me for a final time see whether or not Senator Cools wishes to withdraw her question of privilege.

Senator Cools: Honourable senators, I rose several times today to withdraw the question of privilege. In any event, there is nothing before the chamber in respect of privilege because the motion that I had wanted to move before the chamber, under the *prima facie*, I gave notice yesterday that I am proceeding under rule 58(1). At any given moment, there are numerous procedural possibilities before us. By act of yesterday, I have withdrawn it. The only reason I did not withdraw it earlier today is that I was told that Senator Jaffer would be here. I thought it would be fitting, gentle and good to wait a few moments.

Senator Lynch-Staunton: Order.

Senator Cools: You are out of order, Senator Lynch-Staunton.

Senator Lynch-Staunton: You are making a mockery of this place.

• (1640)

The Hon. the Speaker: Do you withdraw your question of privilege, Senator Cools?

Senator Cools: This is about the fifth time that I have withdrawn my question of privilege. There is nothing before us; there is no need.

The Hon. the Speaker: The question of privilege is withdrawn, honourable senators.

BUSINESS OF THE SENATE

The Hon. the Speaker: We now proceed to the Notice Paper. Motion No. 93, Senator Lapointe.

Hon. Fernand Robichaud (Deputy Leader of the Government) : Stand.

The Hon. the Speaker: Motion No. 95, Senator Gustafson.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Stand.

The Hon. the Speaker: Motion No. 96, Senator Cools.

I am sorry, did Senator Cools say "stand"?

[Translation]

Senator Robichaud: Honourable senators, I rise on a point of order. Several days ago, I recall a situation where an item on the Orders of the Day was called and you did not hear the person in this house say whether or not that person wanted to adjourn debate or not.

We are in the exact same situation now, and I would like to know if Senator Cools would like to adjourn Motion No. 96, which stands in her name, in order for everything to be clear and to avoid having to come back to this point.

[English]

The Hon. the Speaker: Senator Cools has the floor. We are on Motion No. 96 standing in her name. She has the floor.

Hon. Anne C. Cools: Stand. I have not moved it yet.

The Hon. the Speaker: Do you wish this matter to stand?

Senator Cools: I have not moved the motion yet. It is not before the Senate chamber. I have not yet moved it.

The Hon. the Speaker: Is it agreed that the order standing in the name of Senator Cools will stand?

Some Hon. Senators: Agreed.

Senator Cools: It does not stand. It has not been moved. It is a notice.

The Hon. the Speaker: We will move on to the next item, which is the adjournment.

[Translation]

ADJOURNMENT

Leave having been given to revert to Notices of Government Motions:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until at 2 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, December 4, 2001, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
 (1st Session, 37th Parliament)
 Thursday, November 29, 2001

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10	01/06/14	13/01
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02 Senate agreed to Commons amendments 01/06/12	01/06/14	14/01
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04	01/06/14	12/01
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01	01/06/14	10/01
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11 + 2 at 3rd (01/06/06)	01/06/07	01/10/25	25/01
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15	01/06/14	8/01
S-31	An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	01/09/19	01/10/17	Banking, Trade and Commerce	01/10/25	0	01/11/01		

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-33	An Act to amend the Carriage by Air Act	01/09/25	01/10/16	Transport and Communications	01/11/06	0	01/11/06		
S-34	An Act respecting royal assent to bills passed by the Houses of Parliament	01/10/02	01/10/04	Rules, Procedures and the Rights of Parliament					

**GOVERNMENT BILLS
(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources	01/06/06	0	01/06/12	01/06/14	18/01
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources	01/06/06	0	01/06/14	01/06/14	23/01
C-6	An Act to amend the International Boundary Waters Treaty Act	01/10/03	01/11/20	Foreign Affairs					
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30	01/09/25	Legal and Constitutional Affairs	01/11/08	11			
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	01/06/06	01/06/14	9/01
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs	01/06/07	0	01/06/13	01/06/14	21/01
C-10	An Act respecting the national marine conservation areas of Canada	01/11/28							
C-11	An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger	01/06/14	01/09/27	Social Affairs, Science and Technology	01/10/23	0	01/10/31	01/11/01	27/01
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29	01/06/14	7/01
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	15/01
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications	01/10/18	0	01/10/31	01/11/01	26/01
C-15A	An Act to amend the Criminal Code and to amend other Acts	01/10/23	01/11/06	Legal and Constitutional Affairs					
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance	01/06/07	0	01/06/11	01/06/14	11/01
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance	01/06/12	0	01/06/12	01/06/14	19/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	17/01
C-24	An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts	01/06/14	01/09/26	Legal and Constitutional Affairs					
C-25	An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts	01/06/12	01/06/12	Agriculture and Forestry	01/06/13	0	01/06/14	01/06/14	22/01
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	16/01
C-28	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	01/06/11	01/06/12	—	—	—	01/06/13	01/06/14	20/01
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/06/13	01/06/14	—	—	—	01/06/14	01/06/14	24/01
C-31	An Act to amend the Export Development Act and to make consequential amendments to other Acts	01/10/30	01/11/20	Banking, Trade and Commerce	01/11/27	0			
C-32	An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica	01/10/30	01/11/07	Foreign Affairs	01/11/21	0	01/11/22		
C-33	An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts	01/11/06 (withdrawn 01/11/21) 01/11/22 (reintroduced)	01/11/27	Energy, the Environment and Natural Resources					
C-34	An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts	01/10/30	01/11/06	Transport and Communications	01/11/27	0	01/11/28		
C-36	An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism	01/11/29	01/11/29	Special Committee on Bill C-36					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-38	An Act to amend the Air Canada Public Participation Act	01/11/20	01/11/28	Transport and Communications					
C-40	An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed, or otherwise ceased to have effect	01/11/06	01/11/20	Legal and Constitutional Affairs					

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5	referred back to Committee 01/10/23		
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications	01/06/05	0	01/06/07		
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Rules, Procedures and the Rights of Parliament					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Rules, Procedures and the Rights of Parliament (Committee discharged from consideration—Bill withdrawn 01/10/02)					
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01		
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15	Bill withdrawn pursuant to Commons Speaker's Ruling 01/06/12	

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn) 01/05/10 Energy, the Environment and Natural Resources	01/11/27	0			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications					
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26 Social Affairs, Science and Technology					
S-22	An Act to provide for the recognition of the <i>Canadien</i> Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21	01/06/11	Agriculture and Forestry	01/10/31	4	01/11/08		
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02	01/06/05	Transport and Communications					
S-29	An Act to amend the Broadcasting Act (review of decisions) (Sen. Gauthier)	01/06/11	01/10/31	Transport and Communications					
S-30	An Act to amend the Canada Corporations Act (corporations sole) (Sen. Atkins)	01/06/12	01/11/08	Banking, Trade and Commerce					
S-32	An Act to amend the Official Languages Act (fostering of English and French) (Sen. Gauthier)	01/09/19	01/11/20	Legal and Constitutional Affairs					

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02	01/06/14	
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	
S-28	An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	

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CANADA

Debates of the Senate

1st SESSION

• 37th PARLIAMENT

• VOLUME 139

• NUMBER 76

OFFICIAL REPORT
(HANSARD)

Tuesday, December 4, 2001

**THE HONOURABLE DAN HAYS
SPEAKER**

This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.

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(Daily index of proceedings appears at back of this issue.)

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THE SENATE

Tuesday, December 4, 2001

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

INTERNATIONAL DAY OF DISABLED PERSONS

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, yesterday, December 3, we observed the International Day of Disabled Persons. Since 1981, when the United Nations declared the International Year of Disabled Persons, much has been done in Canada and around the world to make society sensitive to the needs of people with disabilities. Many Canadians, such as Terry Fox, Rick Hansen and others, have raised public consciousness of the capabilities of people with disabilities. We have come to realize that we should not impose barriers on those with disabilities any more than we would impose barriers upon those of us who have no disabilities.

[Translation]

Over the years, the Canadian government has responded to the needs of the disabled.

[English]

In 1981, section 15 was introduced into the Charter of Rights and Freedoms prohibiting discrimination on the basis of disability. We now have an officer for disability issues within Human Resources Development Canada.

Here in the Senate, many of us have been actively engaged on this issue. We have adopted an Action Plan on Accessibility for Persons with Disabilities. Last year, the Senate hosted an information fair, and it holds annual partnership days to provide experiences that benefit both Senate staff and the disabled community.

The theme of this year's International Day of Disabled Persons is arts, sports and disabilities. We should continue working together to provide access to employment opportunities for people with disabilities. This year, we should also work to become more cognizant that people with disabilities have a great deal to contribute to our artistic and sports communities, and we should welcome them as equal participants in every aspect of our society.

INTERNATIONAL DAY FOR THE ELIMINATION OF SLAVERY

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, yesterday was also the International Day for the Elimination of Slavery. Most Canadians think of slavery as a phenomenon of the past, but it has been suggested that the buying and selling of human beings may currently be more prevalent than at any other time in history. One estimate suggests that there may be as many as 25 million people who are slaves today.

Let me quote from Dr. Kevin Bales' book *Disposable People, New Slavery in the Global Economy*:

The "old" slavery was based on legal ownership and division along ethnic and racial lines. Slaves were expensive and relationships between slaves and slave owners were often long-term, sometimes multi-generational. The "new" slavery, in contrast, is based not on formal ownership but on other legal instruments such as contracts and debts. Slaves are cheap, even disposable, and drawn from the poor, vulnerable, and dispossessed rather than from particular racial or ethnic groups.

To deal with the continuing tragedy of slavery, we must also deal with the people who sell human beings, the traffickers. Last December, in Italy, Canada signed the United Nations Convention Against Transnational Organized Crime, which contained two protocols against trafficking of humans, particularly women and children, and also against the smuggling of migrants.

The federal government has attempted to deal with the traffickers by amending the Immigration Act, but this fails to protect domestically the Aboriginal child trafficked out of a community in Canada or the young girl trafficked from Nova Scotia to Vancouver. What about a Canadian citizen who is trafficked from Canada to another country?

These crimes do happen, honourable senators, and so the question becomes: What domestic law is there to protect these human beings from being trafficked? Some would say that the Criminal Code has sufficient provisions, such as kidnapping, but the Criminal Code is silent about trafficking in people. There is no definition. There is no severe penalty such as that provided by the new Immigration Act. Should a person who traffics people within Canada's borders be given a lighter sentence than a person or persons who traffic people from other countries into Canada? I believe the provisions of the Immigration Act dealing with human trafficking ought to be placed as well in the Criminal Code, together with provisions to protect Canadians from both domestic trafficking and being trafficked out of Canada.

As we mark the passage of this year's International Day for the Elimination of Slavery, we should reflect on the serious nature of the offences and the consequences to individuals. Parliament should enact a measure to place trafficking as an offence in the Criminal Code of Canada.

ORGAN DONATION FOR TRANSPLANTS

Hon. Catherine S. Callbeck: Honourable senators, as I rise to speak today, almost 4,000 Canadians are waiting for an organ transplant. People with end-stage kidney disease are staying alive only because of frequent and time-consuming dialysis. Many other patients waiting for a new heart or liver may not live long enough to receive the new organ they so desperately need.

Organ transplantation works. Nearly 98 per cent of all kidney transplants, 90 per cent of liver transplants and 85 per cent of heart transplants are successful. However, the success rate is obviously zero when there are no organs available. Last year, 147 Canadians died while waiting for organs that never came.

Canada continues to lag behind other industrialized nations when it comes to organ donation rates. There are fewer than 14 donors per 1 million people in this country as compared to more than 31 donors per 1 million in Spain. Even more discouraging is the widening gap between transplant patients on waiting lists and the number of available organs.

The government has recognized the need for increased efforts in Canada and has committed over \$20 million over the next five years, with plans to increase and coordinate safe organ and tissue donation in Canada. The funding will go toward an awareness campaign on the importance of donation and will establish a permanent national secretariat.

•(1410)

Individual Canadians can do their part without waiting for government action. Organ donation starts at home. Depending on where you live in Canada, simply signing an organ donor card or placing a sticker on your health card or driver's licence provides proof of your desire to donate.

However, honourable senators, after you have done this, you must discuss your wishes with your family. In most parts of the country, doctors will not proceed with organ donation without the family's consent. Statistics show that families who have not been informed only agree to donate organs 58 per cent of the time, compared to previously informed families, who agree to donate 96 per cent of the time.

To conclude, honourable senators, I encourage all Canadians who are able to donate to sign a donor card. Then tell your family about your commitment to donate so that your wishes will be carried through in time to give the gift of life to another.

VANIER CUP

CONGRATULATIONS TO ST. MARY'S HUSKIES ON WIN

Hon. Wilfred P. Moore: Honourable senators, I rise to extend congratulations to the varsity football team, the Huskies, of St. Mary's University in Halifax, Nova Scotia, upon their 42 to 16 victory over the University of Manitoba Bisons to win the Vanier Cup, emblematic of Canadian university football supremacy, at the SkyDome in Toronto this past Saturday evening. With this win, the Huskies completed a perfect 11 to 0 season, during which they outscored the opposition 608 to 66 and did not allow a single rushing touchdown, clearly a historic performance in the annals of Canadian university football.

We commend and respect coach Brian Dobie and the Bisons for the high calibre performance that they brought to this championship game.

We Santamarians are proud of the Huskies, their coach, Blake Nill, and his assistants, our athletic director, Larry Uteck, our athletic director emeritus, Bob Hayes, who started this exceptional football program on a bootstring budget in 1958, and to the silent hand of Father John J. Hennessey, S.J. We congratulate Ryan Jones, the team's composed quarterback, for his stellar performance, which earned him the game's Most Valuable Player on Offence award, and defensive lineman Kyl Morrison, who won the Bruce Coulter Trophy as most outstanding defensive player.

Well done, Huskies! You are our heroes.

MEASURES AGAINST TERRORISM

Hon. Laurier LaPierre: Honourable senators, I rise to deplore the presence of armed soldiers and helicopters across from the Canadian side of the mutual border that we share with the Americans, where our people are unarmed.

I rise as well to deplore the fact that some people might think that this situation is only temporary.

I deplore as well that eight additional countries will be humiliated by Canada by imposing a visa upon them because the Americans desire it.

I deplore that Canada has agreed to change its refugee policy in some way in order to coincide with that of the Americans.

Canada's policy is founded on the fundamental values of the Canadian people. I understand why this is being done but I deplore the fact that, in order to ensure our security and to maintain our prosperity, we are tempted and have decided to do this.

I used to read, when I was much younger, from a book that is known to everyone. In deploring this event and in speaking about prosperity and security, I should like to quote from Matthew 16:26: "For what is a man profited, if he shall gain the whole world, and lose his own soul?"

RULING OF WORLD TRADE ORGANIZATION FAVOURING DAIRY PRODUCTS

Hon. Jim Tunney: Honourable senators, I rise today to impart some good news. The good news is for all of us but, in particular, for the dairy industry: the producers, the processors, the distributors and the retailers of dairy products in this country.

Yesterday, a ruling came down from the WTO Appeal Board regarding the challenge brought by the U.S. and New Zealand against our method of marketing domestically and exporting dairy products. It was proven in that hearing that the U.S. and New Zealand totally failed to prove that there was a violation or that our system was not WTO-compliant.

It is the fifth time that we have been exposed to this kind of challenge. I believe with the fifth time we have some right to call it harassment. I trust that this will be the last time we will need to face this kind of attitude from our trading partner — a partner with whom we are supposed to have a free trade deal.

THE HONOURABLE JERAHMIEL S. GRAFSTEIN

CONGRATULATIONS ON SUCCESS OF
CANADA LOVES NEW YORK EXCURSION

Hon. Leonard J. Gustafson: Honourable senators, I rise to pay compliment to Senator Grafstein for organizing a very successful event in New York.

Hon. Senators: Hear, hear!

Senator Gustafson: The number of people who participated was unbelievable. I do not know how many blocks of people were there. The unfortunate thing was that many could not get into the building. However, it was a very successful event. The mood was great and people enjoyed it whether or not they got in, because there was good spirit throughout. It was good for relations between Canada and the United States at a time when they have gone through a difficult time.

Congratulations.

Hon. Senators: Hear, hear!

RECOMMENDATION TO ADD ROAD SALTS TO ENVIRONMENTAL PROTECTION ACT

Hon. Mira Spivak: Honourable senators, I wish to congratulate the Government of Canada for having published in the *Canada Gazette* the recommendation that road salts, which contain inorganic chloride salts with or without ferrocyanide salts, be added to Schedule 1 under the Canadian Environmental

[Senator LaPierre]

Protection Act, CEPA. This means that there will be consultation. The government has two years to develop management measures to reduce the impact of road salts on the environment.

Road salt is quite a tremendous problem in Canada, as I am sure everyone understands. It is encouraging and very welcome that the government has taken this step in the face of some very active lobbying not to do so.

Congratulations.

ROUTINE PROCEEDINGS

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Lorna Milne, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Tuesday, December 4, 2001

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWELFTH REPORT

Your Committee, to which was referred Bill C-24, *An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts*, has, in obedience to the Order of Reference of Wednesday, September 26, 2001, examined the said Bill and now reports the same without amendment, but with observations which are appended to this report.

Respectfully submitted,

LORNA MILNE
Chair

(For text of observations, see today's Journals of the Senate, Appendix "A", p. 1056.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Moore, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

FOREIGN AFFAIRS

BUDGET—STUDY ON ISSUES RELATED TO FOREIGN RELATIONS—
REPORT OF COMMITTEE PRESENTED

Hon. Peter A. Stollery, Chair of the Standing Senate Committee on Foreign Affairs, presented the following report:

Tuesday, December 4, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

EIGHTH REPORT

Your Committee was authorized by the Senate on March 1st, 2001 in accordance with rule 86 (1)(h) to examine such issues as may arise from time to time relating to Foreign relations generally.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of April 25, 2001. On May 2, 2001, the Senate approved the release of \$3,000 to the Committee. The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

PETER STOLLERY
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "B", p. 1058.)

On motion of Senator Stollery, report placed on Orders of the Day for consideration at the next sitting of the Senate.

•(1420)

BUDGET—STUDY ON THE EUROPEAN UNION— REPORT OF COMMITTEE PRESENTED

Hon. Peter A. Stollery, Chair of the Standing Senate Committee on Foreign Affairs, presented the following report:

Tuesday, December 4, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

NINTH REPORT

Your Committee was authorized by the Senate on March 1, 2001 to examine and report on the consequences for Canada of the evolving European Union and on other related political, economic and security matters.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of April 25, 2001. On May 2, 2001, the Senate approved the release of \$3,000 to the Committee. The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

PETER STOLLERY
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "C", p. 1059.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Stollery, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

THE ESTIMATES, 2001-2002

SUPPLEMENTARY ESTIMATES (A)—REPORT OF NATIONAL FINANCE COMMITTEE TABLED

Hon. Isobel Finnerly: Honourable senators, I have the honour to table the tenth report of the Standing Senate Committee on National Finance, which deals with the Supplementary Estimates (A) for the fiscal year ending March 31, 2002.

On motion of Senator Finnerly, pursuant to rule 97(3), report placed on the Orders of the Day for consideration at the next sitting of the Senate.

AGRICULTURE AND FORESTRY

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Leonard J. Gustafson, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Tuesday, December 4, 2001

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

SEVENTH REPORT

Your Committee was authorized by the Senate on March 20, 2001, to examine international trade in agricultural and agri-food products, and short-term and long-term measures for the health of the agricultural and the agri-food industry in all regions of Canada.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of April 5, 2001. On April 24, 2001, the Senate approved the release of \$60,000 to the Committee.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

LEONARD J. GUSTAFSON
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "D", p. 1060.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Gustafson, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

STUDY ON INTERNATIONAL STATE AND NATIONAL STATE OF AGRICULTURE AND AGRI-FOOD INDUSTRY

INTERIM REPORT OF AGRICULTURE
AND FORESTRY COMMITTEE TABLED

Hon. Leonard J. Gustafson: Honourable senators, I have the honour to table the eighth report of the Standing Senate Committee on Agriculture and Forestry, which deals with the committee's fact-finding mission to Washington, D.C.

[Translation]

FISHERIES

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES
AND TRAVEL—REPORT OF COMMITTEE TABLED

Hon. Gerald J. Comeau, Chair of the Standing Senate Committee on Fisheries, presented the following report:

Tuesday, December 4, 2001

The Standing Senate Committee on Fisheries has the honour to present its

FOURTH REPORT

Your Committee, which was authorized by the Senate on March 13, 2001, to examine and report upon the matters relating to the fishing industry, respectfully requests, that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place within Canada for the purpose of such study.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget application submitted was printed in the *Journals of the Senate* of May 10, 2001. On May 15, 2001, the Senate approved the release of \$40,750 to the Committee. The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

GERALD COMEAU
Chair

(For text of report, see today's Journals of the Senate, Appendix "E", p. 1062.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Comeau, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

CLAIM SETTLEMENTS (ALBERTA AND SASKATCHEWAN) IMPLEMENTATION BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-37, to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

YUKON BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-39, to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Christensen, bill placed on the Orders of the Day for second reading two days hence.

LOUIS RIEL BILL

FIRST READING

Hon. Thelma J. Chalifoux presented Bill S-35, to honour Louis Riel and the Metis people.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Chalifoux, bill placed on the Orders of the Day for second reading two days hence.

•(1430)

CODE OF CANADIAN CITIZENSHIP BILL

FIRST READING

Hon. Noël A. Kinsella (Deputy Leader of the Opposition), presented Bill S-36, respecting Canadian citizenship.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read a second time?

On motion of Senator Kinsella, bill placed on the Orders of the Day for second reading two days hence.

QUESTION PERIOD

PRIME MINISTER'S OFFICE

INVITATION TO RIGHT HONOURABLE BRIAN MULRONEY TO
INVESTITURE OF NELSON MANDELA AS HONORARY CITIZEN

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, some two weeks ago I asked the minister if she could tell this house why — and it appears that it was later confirmed — former Prime Minister Brian Mulroney had not been invited to the ceremony at which Mr. Nelson Mandela was officially made aware that both Houses had passed a resolution granting him honorary citizenship. Does the minister have an answer for me today?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the Honourable Senator Lynch-Staunton for his question. The answer I have been given is that no former prime ministers were invited, that there was limited space in the room provided. The first intent, of course, was to call upon senators and members of Parliament who had participated in the resolution that made Nelson Mandela an honorary Canadian citizen, and then calling upon other groups of people that are frequently invited to such public occasions. Privy Councillors outside of those sitting in the present Parliament, including former prime ministers, were not invited.

Senator Lynch-Staunton: Honourable senators, I do not know how the minister can give that reply with a straight face. It is absolute balderdash. There was room in the hall for children of MPs, for civil servants, and there was room in the hall for one

extra chair. That chair should have been reserved for former Prime Minister Mulroney. He was not invited to attend the swearing-in of Mr. Mandela in South Africa as president of his country. He was not invited to attend a joint session of this Parliament when Mr. Mandela spoke to it some two years ago, and he was slighted deliberately a third time by not having been invited to the last ceremony mentioned. It was insulting to Mr. Mulroney and all the major contributions he made to allow South Africa to become the free state it is today. It is demeaning to the Parliament and to this country.

HUMAN RESOURCES DEVELOPMENT

AUDITOR GENERAL'S REPORT—CONTRIBUTIONS
TO EMPLOYMENT INSURANCE ACCOUNT

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. In her latest report, Canada's Auditor General has again raised the issue of EI premiums, pointing out that the Employment Insurance Commission failed to disclose to the public and to Parliament how it set EI premiums for 2001.

She said:

We expected the Commission to clarify and disclose the reasons for collecting \$21 billion more than the maximum reserve suggested by the Department's Chief Actuary. The Commission did not explain the reasons for not accepting the Chief Actuary's suggested maximum reserve. Further, it did not provide an adequate justification for the \$36 billion accumulated surplus at 31 March 2001. Therefore, we are unable to conclude that the intent of the *Employment Insurance Act* had been observed in setting the 2001 premium rates.

Can the Leader of the Government in the Senate advise the Senate why the government is unwilling to accept the recommendation of the HRDC actuary for the suggested maximum reserve in the EI account? Can she provide, in the words of the Auditor General, an "adequate justification" for the \$36-billion accumulated surplus in the EI fund?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is very interesting that the honourable senator has asked a question about the Auditor General's report with respect to EI this afternoon because it was just two weeks ago when this same senator stood in this chamber and argued that the government would not decrease the premiums for EI whatsoever. As he knows quite well, on November 30, 2001, the employment premiums were reduced by 5 cents to \$2.20 in 2002. This reduction will put \$400 million in the pockets of workers and businesses next year, said Minister Martin.

I thought that the honourable senator's question today would in some respect congratulate the Government of Canada because he was so convinced just a short period of time ago that they would not make that change, and it has, in fact, made the change.

Senator Stratton: Could I have an answer to my question?

Senator Carstairs: You have an answer.

Senator Stratton: Honourable senators, I do not think that is an appropriate answer at all. While I can argue about the 5-cent reduction in terms of what it means with regard to the \$36-billion accumulated surplus as of March 1, 2001, what the minister is talking about is ridiculous. It is something like \$20 a year for the average worker. I think the minister needs to get a little more real here and answer the question. How can the government justify not explaining to the Canadian people how it can have a \$36-billion accumulated surplus as of March 31, 2001? Why is the government doing this? Why is it keeping premiums high when we have that kind of surplus? When people look at the \$36-billion surplus, most or perhaps some get the idea that that is really where your surplus comes from in the first place.

Senator Carstairs: The honourable senator, of course, would like the government to cut premiums to EI.

Senator Stratton: Yes.

Senator Carstairs: That is certainly something that I respect. This seems to be a particular concern of his, and it is a legitimate concern from his perspective.

However, the law gives the power to the government to set this premium rate. It did set a premium rate for this year, which was a reduction from premium rates of the past and the result of eight consecutive times of reductions to premium rates. Clearly, the government is going in the right direction. With regard to the question the honourable senator asked, the Auditor General, of course, certainly has taken a position, and that position is respected by the government, but the government has acted on its legislative authority.

ATLANTIC CANADA OPPORTUNITIES AGENCY

AUDITOR GENERAL'S REPORT—PUBLIC REPORTING ON PORTFOLIO OF REPAYABLE CONTRIBUTIONS

Hon. Gerald J. Comeau: Honourable senators, my question is for the Leader of the Government in the Senate. It relates to comments by the Auditor General on the question of the Atlantic Canada Opportunities Agency.

Generally, the auditor found that the agency had used due diligence in approving, assessing and monitoring commercial projects and managing its portfolio of repayable contributions. That is a positive aspect. On this side of the house, I wish to take some of the credit for the good planning that went into the creation of the Atlantic Canada Opportunities Agency. As a matter of fact, I sat on the legislative committee that put it in place. Some of the credit goes to this side of the house.

It is always nice to take credit on this side, but we do have to find some fault with what is happening. In this case, the Auditor General found that the agency does not report publicly on the

performance of its \$400-million portfolio of repayable contributions. Will the minister indicate to this house whether this will be rectified in the near future so that we can return ACOA to the rightful positive image that it should have?

• (1440)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is important to note, as the Honourable Senator Comeau has just done, that the Atlantic Canada Opportunities Agency has come in for considerable praise by the Auditor General. She indicated that ACOA has become much more rigorous in its assessment of commercial projects. That is all to the good. They have also made some comments that would lead the government to doing further things. The government has said clearly that it will read the report with great interest, and they will have a rigorous review and follow-up to the proposals of the Auditor General.

AUDITOR GENERAL'S REPORT—FUNDING TO UNSUSTAINABLE COMPANIES

Hon. Gerald J. Comeau: Honourable senators, you will see as you read through the report with "rigorous" interest — which I hope you will — that the Auditor General found that ACOA continues to provide long-term funding to organizations that have little prospect of becoming self-sustaining and financing their own operations.

With that in mind, would the minister indicate whether this other shortcoming of ACOA will be rectified shortly?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can only give the same answer that I gave to the previous question. As it has in the past, the government has been following up, and it has been congratulated for that follow-up on a number of fronts by the Auditor General. The government has rigorously examined those areas that the Auditor General feels are not going well, and they will continue to be rigorous in their review of all the present recommendations.

SOLICITOR GENERAL

ROYAL CANADIAN MOUNTED POLICE—QUESTIONING OF NEW RECRUITS REGARDING SEXUAL ORIENTATION

Hon. Laurier L. LaPierre: Honourable senators, pursuant to the front-page article in the *Ottawa Citizen* of December 3, 2001 with respect to the questioning of prospective recruits by the RCMP as to their sexual orientation, will the Leader of the Government in the Senate be kind enough to provide answers to the following two questions:

Are prospective recruits to the RCMP asked questions concerning their sexual orientation at the present time?

What penalties, if any, does the RCMP currently inflict on members of the force who do not voluntarily admit to being gay or lesbian?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question because, when I read the story, I think I had the same concerns that the honourable senator has. However, I did make inquiries.

Apparently there is a question — Question No. 35 to be exact — which is considered a security reliability question. It asks in general about behaviours which might leave a person at risk of coercion or blackmail. That is the nature of the question: Do you have anything in your life that might make you subject to coercion or blackmail? The specific subject or topic of sexual orientation never comes up during the interview because, quite frankly, it would be illegal to do so.

Senator LaPierre: Honourable senators, I hope that the Honourable Leader of the Government is aware that anyone who argues that anyone can be blackmailed for being gay or lesbian ought to be committed.

Senator Carstairs: I would hope that, in today's society, blackmail and coercion of any form against people based on any aspect of their life, be it their race, their creed, their colour or their sexual orientation, would not occur in Canadian society, and should be roundly condemned if it does.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in this house a response to a question raised in the Senate on October 30, 2001, by Senator Forrestall, regarding efforts being made to increase the level of security and intelligence.

PRIVY COUNCIL OFFICE

EFFORTS TO INCREASE LEVEL OF SECURITY AND INTELLIGENCE

(Response to question raised by Hon. J. Michael Forrestall on October 30, 2001)

Significant workload increases have affected PCO and a number of other departments and that like any other manager, he needs to be concerned about the long-term sustainability of this situation.

While we cannot predict how events will unfold, the heightened security status is likely to continue past Christmas. As a matter of course, organizations facing significant new challenges adjust by rationalizing objectives and by finding efficiencies. PCO is doing this and I am confident this is providing some relief.

Mr. Fadden and his colleagues in the Privy Council Office have explored ways to share the workload and

expertise, and are thus alleviating the pressure in the Security and Intelligence Secretariat in the short term.

As part of the immediate programming initiatives announced by the government in October, \$30 million was slated for full-time equivalents (FTEs) to be shared by Customs, Immigration, the RCMP and Transport Canada. This represents about 300 new workers for border points.

Within the departments and agencies themselves, managers have prioritized their resources and redeployed individuals and resources to the war on terrorism where possible.

Ministers in the Ad Hoc Committee on Public Security and Anti-Terrorism are addressing the ongoing challenges facing the government brought about by the new threat environment.

The Intelligence Assessment Secretariat provides the government with policy neutral intelligence assessments based on all available sources, including intelligence provided by other government departments.

The ministers in the Ad Hoc Committee on Public Security and Anti-Terrorism are addressing the ongoing challenges facing the government brought about by the new threat environment.

Immediately after September 11, departments and agencies prioritized their requirements in light of the heightened workload and redeployed their resources accordingly. They have done this within their current allotments.

CSIS, CCRA, CSE and the RCMP undertake their own recruitment and hiring. Before and since September 11, they continue to seek out new employees in campaigns at universities and other specialized venues. There are lists of prequalified individuals who can be hired immediately, as well as lists of outstanding applicants who must undergo security clearances or other screening.

Other government entities, such as Transport Canada, Immigration and DFAIT hire through the Public Service Commission.

As part of the immediate programming initiatives announced by the government in October, \$30 million was slated for full-time equivalents (FTEs) to be shared by Customs, Immigration, the RCMP and Transport Canada. This represents about 300 new workers for border points.

The departments and agencies are in the process of staffing these new positions. Most new hires will come from pools of people who have already prequalified, while new hiring processes are under way for the rest.

[English]

ORDERS OF THE DAY

INCOME TAX CONVENTIONS IMPLEMENTATION BILL, 2001

MESSAGE FROM COMMONS

The Hon. the Speaker: Honourable senators, a message has been received from the House of Commons to return Bill S-31, to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; and to acquaint the Senate that they have passed this bill without amendment.

[Translation]

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—MOTION IN
AMENDMENT—MOTION TO FURTHER DEFER
DEFERRED VOTE ADOPTED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, and notwithstanding rule 58(l)(i), I move:

That, notwithstanding any Rule of the Senate, the Order adopted on November 29, 2001, with respect to the deferred recorded division on the motion in amendment of the Honourable Senator Oliver to Bill C-31, be amended so that the division take place at 6:00 p.m. today, and that the bells sound at 5:30 for 30 minutes.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[English]

CANADA NATIONAL MARINE CONSERVATION AREAS BILL

SECOND READING—DEBATE ADJOURNED

Hon. Tommy Banks moved second reading of Bill C-10, respecting the national marine conservation areas of Canada.

He said: Honourable senators, over 100 years, Canadians have built a world-renowned system of national parks. This Parliament now has the opportunity to set the stage for building a system of national marine conservation areas. When we do that — and I hope we will — we will ensure that future generations of Canadians will be able to enjoy and appreciate the diversity of

our magnificent marine environments in the same way that they now enjoy our national parks.

The long-term goal of this bill is to represent each of Canada's 29 marine regions in a national system of marine conservation areas much as we will establish a national park in each of the terrestrial areas of Canada. Each national marine conservation area, like each national park, should be an outstanding example of the region that it represents.

There is an assumption, though, that marine conservation areas will simply be national parks on the water. That is not so. In national parks, the maintenance of ecological integrity is the first priority when considering park zoning and use by visitors. In other words, parks are managed so as to keep them essentially unchanged by human activity from their natural state. National marine conservation areas, on the other hand, are designed to be models of sustainable use. The approach to management is one which balances protection and use. As a result, we need specific legislation tailored to national marine conservation areas.

I will give a quick overview of the legislation indicating how it is designed to manage protected areas in the complex world that is our marine environment.

•(1450)

This bill establishes the legal and regulatory authority and framework for creating and managing national marine conservation areas. It does not, by itself, create any national marine conservation areas; instead, it provides a mechanism for formally establishing them under the bill.

A national marine conservation area is formally established when its land description is added to a schedule of the bill. This brings those lands under the formal protection of the legislation. As in the recently proclaimed Canada National Parks Act, about which I spoke, and I know all honourable senators remember that fondly, it sets out an Order in Council process for the establishment in law of national marine conservation areas.

While the Order in Council process will speed up the scheduling of new conservation areas, I remind the house that, as in the case of the National Parks Act, the supremacy of Parliament remains. The bill requires that proposals to establish new national marine conservation areas must be tabled in both Houses of Parliament, and should either House of Parliament demur, should it accept our committee report that the establishment should not take place, then the Order in Council does not proceed.

As is the case for our national parks, Bill C-10 requires federal ownership of all lands to be included in a national marine conservation area both above and below the water. This ensures that the Minister of Canadian Heritage will have administration and control of these areas. If a province, however, owns all or part of the land where Parks Canada proposes to establish a national marine conservation area, then the province would have to agree to the use of those lands for a marine conservation area and a federal-provincial agreement would be required to transfer ownership to the federal government. Without such an agreement, the proposed marine conservation area cannot and will not proceed and, for greater certainty, that requirement is specified in the legislation.

In marine areas where there is contested federal-provincial jurisdiction — and I would like to assure the house that the federal government has no intention of acting unilaterally — there will always be consultation with the province concerned with a view to finding a mutually satisfactory resolution.

There is a clear requirement in the bill — not merely a suggestion — for public consultation in the establishment of marine conservation areas with particular emphasis given to affected coastal communities. The nature of these consultations is set out in Parks Canada's policies. The steps required by these policies can take years to complete. The national marine conservation area feasibility studies, which have already been launched by Parks Canada, illustrate this policy in action.

If there is no public support for the creation of a national marine conservation area in a given location, then the proposal would not be brought forward to Parliament. In that circumstance, either House of Parliament would be able to, in effect, veto it. Parks Canada would look to another area in which to place a marine conservation area to represent that region.

When the government decides to take the final step and formally establish a national marine conservation area, Parliament will have the opportunity to examine the proposal in detail and to satisfy itself that there is community support, absent which either House of Parliament can veto the establishment of a marine conservation area.

The bill also calls specifically for active stakeholder participation in the formulation, review and implementation of management plans. Again, the legislation provides that those plans will be tabled in Parliament.

Coastal communities need certainty before an area is established. When a new proposal comes before Parliament, along with a report on the consultations that have been held and any agreements that have been reached with the provinces and other departments, there will also be an interim management plan. Management advisory committees will be established for each marine conservation area to ensure that consultation with local stakeholders continues on an ongoing basis. Those management plans must be reviewed at least every five years.

The government will take a "learn by doing" approach for every national marine conservation area. Ongoing consultations within each marine conservation area will allow Parks Canada staff to learn from local people, drawing on Aboriginal ecological knowledge of coastal communities and other things that attend the establishment of these areas.

Parks Canada has taken a partnership approach in the management of this program, and this is clearly reflected in the bill. Other ministers have statutory responsibilities that will affect the management of national marine conservation areas, and Bill C-10 has been carefully drafted to take that fact into account.

I should like to spend a few moments telling honourable senators how Bill C-10 reflects the government's commitment to working with Aboriginal peoples. The legislation includes provisions to establish "reserves" for national marine conservation areas. These are established when an area, or a portion of an area, which is proposed to be included in a national marine conservation area, is subject to a comprehensive claim for an Aboriginal land settlement on which the government has agreed to begin negotiations. Reserves are managed as if they were national marine conservation areas but without prejudice to the settlement of the claim. A non-derogation clause — this should be no surprise to honourable senators — will also be included in the bill, as it is in all bills these days. No provisions of this bill will derogate from rights guaranteed to Aboriginal peoples under the Constitution.

There is also a specific requirement in this legislation to consult with Aboriginal organizations and governments and with bodies established under land claim agreements. The legislation also explicitly recognizes traditional Aboriginal ecological knowledge in carrying out research and monitoring studies in national marine conservation areas.

Finally, the proposed legislation also includes provisions which would allow the Governor in Council to remove lands from national marine conservation areas or reserves by Order in Council if a court finds that the Aboriginal title exists and the title holder does not want the lands to remain as parts of a marine conservation area or as part of a reserve.

Certain activities are prohibited through all national marine conservation areas contemplated in this bill. The most important of these prohibitions concerns non-renewable resources, specifically minerals, oil and gas. Marine conservation areas are managed for sustainable use and, by definition, extraction of non-renewable resources is not sustainable.

Other activities would be regulated through zoning. I want to emphasize to the house the importance of zoning as a powerful and flexible tool for managing use within a marine conservation area. In each of these national marine conservation areas there will be multiple use zones where ecologically sustainable uses are encouraged, including fishing. There will also be zones where special protection is afforded: for example, critical spawning grounds, cultural sites or whale calving areas and scientific research sites. There will be protection zones where resource use is not permitted. Each marine conservation area will contain examples of each of those two types of zones.

At the same time, enough flexibility is left in the bill to ensure that each area can have a zoning plan that is applicable to its individual situation. Parks Canada will identify the location of protection zones and surrounding multiple use zones for each proposed marine conservation area during the feasibility study for that area in full consultation with all the stakeholders.

Federal legislation such as the Fisheries Act and the Canada Shipping Act is already being used to manage activities in the marine environment. These statutes were not intended to cover the special requirements of national marine conservation areas. Bill C-10 includes a number of regulation-making authorities which will be used to fill in the gaps that exist in those other statutes. For example, the bill includes authorities to make regulations for the protection of cultural resources, visitor safety, the establishment of zones and the control of activities within those zones, and the control of overflights by aircraft which pose a threat to wildlife.

• (1500)

The bill also has built into it considerable checks and balances on the substance of the regulations that might be made under the act. Specifically, any regulations that impact on the jurisdiction of the Minister of Fisheries or the Minister of Transport must be made on the recommendation of both the Minister of Canadian Heritage and the affected ministers.

This proposed legislation also includes penalties for offences against the Canada National Marine Conservation Areas Act or its regulations, which would be the same as those under Part II of the Oceans Act. Fines of up to \$500,000 may be levied for offences under the act.

Honourable senators, I should like to reiterate that Bill C-10 is framework legislation. It provides the tools needed to create national marine conservation areas and to manage each one in a way that is appropriate to its unique characteristics. I believe the bill has struck a very appropriate balance between protection on the one hand and sustainable use on the other. Very few activities are completely prohibited, but tools are available to regulate activities so as to ensure that the structure and function of each area's ecosystem are not compromised.

There is an obligation to consult affected committees during feasibility studies and in the management planning process and in preparing the applicable regulations. Each area will be unique in its characteristics and uniquely managed. For example, the national marine conservation area in Georgian Bay would be quite distinct from one in the Beaufort Sea, in the Strait of Georgia or in the Bay of Fundy.

Canada needs this legislation, honourable senators, so that outstanding examples of our country's natural and cultural marine heritage can be provided long-term protection and so that all Canadians can learn more about and experience this shared heritage. I commend the attention of honourable senators to this bill.

On motion of Senator Comeau, debate adjourned.

[Senator Banks]

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, with amendments) presented in the Senate on November 8, 2001.

Hon. Wilfred P. Moore: Honourable senators, this afternoon I join the debate on the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs with respect to Bill C-7, the youth criminal justice bill.

My remarks are directed to the amendments numbered 4 and 5 on page 3 of that report, being the two amendments that I introduced at committee and which were adopted by the committee.

The first amendment is substantive. It calls for the inclusion of section 718.2(e) of the Criminal Code in clause 38, being the sentencing part of this bill. This amendment simply gives to youth Aboriginal offenders the same considerations and opportunities upon sentencing as are provided adult Aboriginal offenders under the Criminal Code. This amendment states that a court that imposes a sentence shall also take into consideration the principle that:

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons.

To include that amendment is to be consistent with the decision of the Supreme Court of Canada in the landmark case of *R. v. Gladue*, which found that one of the purposes of section 718.2(e) of the code was to respond to Aboriginal over-incarceration.

The second amendment is non-substantive. It is merely the cross-reference change that would be required to clause 50 should the substantive amendment to clause 38 enjoy the favour of this chamber.

In his speech on November 29 last, Senator Joyal stated that these amendments seem to be natural. As reported at page 1829 of the *Debates of the Senate*, he said:

They flow from what we are trying to do here to deal with the rights and freedoms of a vulnerable segment of society; in fact the most vulnerable one, those who have less social support, less opportunity for education, a weakened family environment, and not the same opportunity that the average Canadian kid has to become a positive contributor to our society.

It is evident that our Aboriginal youth are among that most vulnerable segment of our society. The committee heard that while the non-Aboriginal youth population has remained constant, the Aboriginal youth population has increased steadily. As a direct consequence, there has been a dramatic increase in the number of Aboriginal youth who find themselves in our criminal youth justice system. Further, and sadly, we heard that 62 per cent of the youth in custody in Manitoba are Aboriginal, and that 80 per cent of the youth in custody in Saskatchewan are Aboriginal.

Honourable senators, this vulnerable segment of Canadians is crying out for our help.

The words "Aboriginal young persons" are mentioned only once in this entire bill. That inclusion is merely a reference in clause 3(1)(c)(iv) under the "Declaration of Principle." Upon consideration of the evidence before the committee, it is clear that the plight of our Aboriginal young offenders deserves and must have the full weight of the law, not merely such a statement of principle but, rather, a specific legislative provision as proposed in the substantive amendment before honourable senators.

On this point, the Aboriginal Legal Services of Toronto submitted that in their opinion the provisions of this bill regarding the sentencing of Aboriginal youth are markedly inferior to similar provisions in the code. Citing this situation as "more than just absurd," they submitted that it is a violation of our Charter of Rights and Freedoms in that adult Aboriginal offenders are receiving a benefit that their younger brothers and sisters are not able to receive, which, in their opinion, is discriminatory on the basis of age and thus a violation of section 15 of the Charter.

Your committee was cautioned that if section 718.2(e) of the Criminal Code is not placed in the proposed act, Aboriginal Legal Services of Toronto will appear, at the first opportunity, before a youth court judge preparing to sentence a Aboriginal youth offender and bring a section 15 Charter challenge to that sentencing hearing. They are confident that such an application would be successful and that their challenge would survive appeals to higher courts. Honourable senators, this is not the preferable way to resolve this issue. The preferable way is to approve the proposed amendment to clause 38 of this bill.

A most impressive witness to appear before your committee was Judge Tony Mandamin, who is a member of the Wikwemikong First Nation on Manitoulin Island, Ontario, a university graduate in electrical engineering and law, and a Provincial Court Judge in Calgary, Alberta. He advised the committee that he attended a conference on youth justice committees that included native and non-native youth justice committees. He said:

There is a difference between the two. The native justice committees are people-oriented; they make connections with people and think of what to do. The non-native committees were rule-driven; they are concerned with protocol and rules. This bill fits the latter approach.

He went on to say:

If you are talking about the impact of the bill, consider that the percentage of Aboriginal youth involved in the criminal justice system is way out of proportion to that of non-Aboriginal youth. Lowering the age, introducing more adult sentences, and putting more conditions in terms of the dispositions will mean that the group most involved in that system will be the ones most caught by it.

In her superb speech last Tuesday with respect to the difficulties in acquiring adequate legal assistance, Senator Chalifoux pointed out that in such a fundamental issue as plea bargaining the vast majority of Aboriginal Canadians do not have the advantages of such "nuances and options" of our non-Aboriginal criminal justice system. Add to that the issues of geographical distances between home and court, the language barrier, and the foreign concepts of our non-Aboriginal criminal justice system and it is clear that these circumstances must receive particular attention when a court is sentencing an Aboriginal young offender. Consideration of these circumstances can only be truly assured if section 718.2(e) of the Criminal Code is included in the bill as per this proposed amendment.

•(1510)

Honourable senators, a number of you have spoken to me privately and encouraged me in these efforts, so I know that this amendment is on your mind and likely in your hearts. You have a gift, the very precious gift of being in the position of legislating the lives of your fellow Canadians. It is a privileged opportunity that carries an incumbent responsibility: the responsibility to put in place the laws by which Canada can stand up as the champion of compassion and fairness for her citizens, and the best country in the world in which to live. I urge you to support these amendments as set out in the subject report.

If you cannot vote for the report which includes these amendments, do not fret. You will have another opportunity to support these two important amendments, as I intend to move them on third reading of this bill.

Hon. Jeremiah S. Grafstein: Honourable senators, I too, rise in support of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-7. At the outset, I wish to concur with the comments of the Honourable Senator Moore and the Honourable Senator Joyal. All honourable senators worked arduously on this committee and were all moved by the testimony we heard over many weeks.

I should like to start my perspective of this bill with a quick examination of the role of the criminal power in Canada from the days of Confederation. All honourable senators will recall that section 91.27 of The Constitution Act, 1867, confers on the federal Parliament the exclusive power to make laws in relation to the criminal law. The section states:

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

Honourable senators should recall why the Fathers of Confederation were so obsessed with retaining for the federal Parliament the exclusive power to legislate on criminal matters. At the time of Confederation in 1867, the American experience inundated the Canadian Fathers of Confederation. You will recall that in the United States one of the causes of the civil war was a clash between the states, which had sovereign powers, and the central government. The Fathers of Confederation quite wisely decided that, in order to ensure unity in Canada and equality across the regions, they would guarantee that criminal power would be equal across all regions of the country. They wanted to avoid the sharing of the criminal power and other powers, as was so evident in the clash in the United States.

Therefore, the provinces established under Confederation were not to be sovereign. There is no such thing as a sovereign province. There were certain exclusive powers granted under section 92 to the provinces that they would exercise exclusively, but the Fathers of Confederation declared that even when a power was allotted to the provinces, it was not to be an absolute or exclusive power because the federal government could use three levers of restraint. The federal government had the residual power of "peace, order and good government"; the power to reserve provincial legislation; and the power to disallow provincial legislation. Specifically with respect to the criminal power, it was important that that power be uniform right across the country, equal in every region, equal treatment before the law.

Senators from the province of Quebec will remember that even at the height of the unrest in Quebec there was never a question with respect to the federal exercise of the criminal power. Even during the days of the emergency legislation, not once was the federal government's exclusive criminal power challenged.

There has been an unchallenged concurrence across the country that the criminal power should be equal in every region across the country. Of course, the administration of justice is left to the provinces so there will be local variations and local conditions, but the criminal power itself was to be equal across the land.

What about the origins and nature of criminal power? We need to go back to the Old Testament. Deuteronomy 16:20 says "Justice, justice shall you pursue." This was a double test of fairness. The patriarchs said that it was not good enough to say "justice" once, "justice" was repeated. In effect, it meant that the exercise of criminal power should never be used excessively, that it should be used very frugally, very carefully and very prudently. It should always be used with the greatest care and fairness.

Honourable senators, I come from the Laskin-Scott-Trudeau-Turner school, all of whom were fine criminal theoreticians. Chief Justice Laskin was a constitutional teacher of mine. Mr. Scott, from Quebec, was a constitutional expert. Mr. Trudeau and Mr. Turner, as we all know, were great ministers of justice. All of those gentlemen taught that police power should be used sparingly and frugally. The emergency

powers that were adopted in Quebec during the Quebec crisis were just that, emergency powers, and they were quickly withdrawn when things got back to normal — excessive powers, yes, but quickly withdrawn.

It is clear that the excessive use, even theoretically, of the criminal power dilutes the power of the state. The more often you use the criminal power to solve a problem, the more diluted becomes respect for the state. Using it too often and too grandly dilutes the essential element of the criminal power, which is the apprehended application of the criminal power. If you threaten the criminal power too often, it dilutes the effectiveness of the state. All legal philosophers agree with this premise. They all concur that we must be wary of using or abusing the criminal power.

Canada had an interesting experience with this. The "Padlock Law" in Quebec virtually brought down that government. That was the beginnings of the Quiet Revolution in Quebec because that legislation was an excessive use of criminal power. In Ontario, the excessive police powers adopted by the provincial government almost brought down that government. Canadians abhor the use of excessive criminal power. It is true that in certain times they will overreact. Ultimately, they will say that anyone who abuses the criminal power will pay the price. Canadians do not like the excessive use of criminal power.

It is not surprising that the Senate committee studying the terrorism legislation spent all of its time on one singular objective: to reduce the state's use of the criminal power, to ensure that the federal criminal power was circumspect, to ensure that it is not used excessively.

We therefore have this bizarre situation. At the same time as the Senate agrees, almost unanimously, to a report of a committee to reduce the criminal power with respect to terrorism where there is an apprehended danger to public order, we have the application of the criminal power in this youth criminal justice act that expands criminal power as it applies to youth under the age of 16. This is more than bizarre.

• (1520)

This increased criminalization is almost the opposite of the goals set out in the preamble to Bill C-7. What are the goals set out in the preamble: to set up a therapeutic model for youth to reduce recidivism. We find increased criminalization most obscenely present as it applies to Aboriginal youth. Excessive incarceration does not reduce the problem. We just padlock them and think the problem will go away. What do we do when we are confronted by this invidious situation of high rates of Aboriginal incarceration? We increase the criminal power. We reduce the age for adult crime from 16 to 14, presumptively, so provinces can opt in and reduce the age by clause 61. What does that do? It puts in the hands of the provinces the ability to say, "In our province, it is at age 16 that serious problems will be treated as criminal problems. We will criminalize youth even more. We will add even stiffer penalties."

[Senator Grafstein]

The defenders of this bill and this provision say, "Wait a minute. The Supreme Court of Canada does not agree with you, senator." We can have different penalties apply to different youth. As a matter of fact, if someone is 14, a youth offender can be transferred to criminal court under the present law. That is so, but that is not the situation here. In that circumstance, if a youth offender is alleged to have committed a serious offence, either the Crown prosecutor or the defence can make an application, and the court decides case-by-case whether a transfer to adult court should be made. It depends on the facts of each case. There onus provisions.

That is it entirely different than what the Minister of Justice proposes in this legislation. She proposes to give each cabinet of each province the right to reduce the age for serious crimes from 16 to 14. What will be the result? This is a wholesale delegation of the criminal power. Will there be equality across the land with respect to youth offenders? Not so; it will be a patchwork quilt of criminal landscapes. It will be different in Ontario, my province, than it will be in Quebec.

Quebec has the most enlightened model of youth offenders. Incarceration is lower. It is a great progressive model. I have often been a critic of Quebec on many counts. The Honourable Senator Nolin knows that. However, when Quebec does something right, we should support it fully. Quebec's model is progressive and working well.

My own province is retrogressive. My own province believes that we should incarcerate children: the greater incarceration rate, the stiffer the penalties, the better. That is counter-productive. It is contrary, as the Honourable Senator Joyal pointed out, to the UN Convention on the Rights of the Child.

I cannot agree with this, honourable senators. This is a misappropriation of state power. More important than that, it is an *ultra vires* wholesale delegation from the federal government to the provinces. The federal government has no right to delegate its exclusive criminal power province by province. It is contrary to the wishes of the Fathers of Confederation. It is contrary to the equality of law across the land under the Charter. Why should a youth be treated differently in one province than in another? Does he have fewer rights? Is he less a citizen? It does not make any sense.

We know why it happened. It is no surprise. There was a public outcry about serious crimes among youth. However, what are the statistics? The Honourable Senator Nolin knows this because he was on the committee. The statistics say that youth crime is on the decline. There are some spikes with respect to the odd serious crime, but overall, in the last 10 years, the statistics say that youth crime is declining. Why have this piece of legislation to satiate a public perception but not a reality? Why do that? Why play politics with the criminal power? Why play politics with the criminal power as it applies to youth in this country? It is wrong; it is unnecessary; it is unprincipled. I did not say that. The witnesses said that.

Who defends this bill, this provision? The Attorney General in my province defends it. The Attorney General in Manitoba

defends it. Some police officers defend it, but even they are queasy about it. The overwhelming evidence was against this particular provision in clause 61.

If I have a choice, honourable senators, between the views of the Attorney General of my province or the Elizabeth Fry Society or the John Howard Society, I will take the views of the John Howard Society. I will take the enlightened opinions of the Elizabeth Fry Society. I will take the therapeutic model of the province of Quebec, which, to a man and to a woman, is against this particular provision. That is my choice.

Honourable senators, I find that there are four problems with clause 61. It is *ultra vires* the Constitution. It is *ultra vires* in the sense that the Government of Canada is delegating exclusive power to the opting-in to provinces under section 91(27). It is contrary to section 15 of the Charter, the equality provision of the Constitution. The Honourable Senator Joyal made an eloquent statement about that. I will not repeat it, but I concur with his every argument.

It is contrary, in my view, to the UN Convention on the Rights of the Child and all the related international conventions. I concur again with Senator Joyal and other senators who have made the eloquent argument about the non-compliance of certain provisions in Bill C-7 with these international treaties and conventions.

It is contrary to the positive impact the bill should have on the Aboriginal youth in this country, who need help more than any other segment of our population.

Finally, it goes against the weight of the evidence. The committee sat hour after hour, and the evidence overwhelmingly supported the proposition that this provision is wrong. There were exceptions to the rule. The Minister of Justice had her view. The Attorney General of Ontario had his view. However, they are wrong in principle and in practice based on the weight of the evidence before the committee.

What are we to do, honourable senators?

The Hon. the Speaker: Honourable senators, I must advise the Honourable Senator Grafstein that his 15 minutes have expired.

Senator Grafstein: I ask for leave to continue, honourable senators.

The Hon. the Speaker: Is leave granted?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, as long as there is a time limit, I have no problem in granting leave. Other senators were limited to five minutes.

Senator Grafstein: Honourable senators, the choice is clear. Do we choose the therapeutic model for young offenders that was so successfully adopted and works in Quebec, or do we regress and go back to a criminal model, back to the darker ages when we treated children as criminals? Why do that?

Beware, honourable senators, of the excessive use of the criminal power. This measure will come back to haunt us. The Bible is always right: Justice, justice shall you pursue.

Honourable senators, I support the report and I support amendment No. 6 in the report. It is interesting that 10 of the 12 senators who heard the evidence supported my amendment to clause 61. The chairman did not. I respect that. The proposer of the bill, Senator Pearson, did not. I respect that as well. However all other senators, 10 out of the 12 senators who heard all the evidence as I heard it supported my amendments.

Finally, honourable senators, if we do not do our work, if we allow clause 61 to be struck down by the courts, is not the Senate doing something even more improper? We are delegating our law-making powers to the courts. In the process, we will dilute the respect of Parliament, especially the Senate. Is it not dangerous to invite the courts to become legislators, contrary to the separation of powers under our Constitution, where Parliament was to be supreme in its law-making and it was for the courts to only interpret the law? This is the decision that we must make as we approach this particular amendment in the report.

Therefore, honourable senators, I respectfully ask you to join with those honourable senators who support this particular report and, specifically, amendment No. 6 of the report.

On motion of Senator Stratton, for Senator Andreychuk, debate adjourned.

•c1536•

ABORIGINAL PEOPLES

BUDGET—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Aboriginal Peoples (budget—study on issues affecting urban Aboriginal youth in Canada) presented in the Senate on November 29, 2001.—(*Honourable Senator Chalifoux*).

Hon. Thelma J. Chalifoux moved the adoption of the report.

Motion agreed to and report adopted.

NATIONAL SECURITY AND DEFENCE

BUDGET—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on National Security and Defence (budget—release of additional funds) presented in the Senate on November 29, 2001.—(*Honourable Senator Kenny*).

Hon. Colin Kenny moved the adoption of the report.

Motion agreed to and report adopted.

[Senator Grafstein]

[Translation]

ILLEGAL DRUGS

BUDGET—REPORT OF SPECIAL COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Senate Special Committee on Illegal Drugs (*budget—release of additional funds*), presented to the Senate on November 29, 2001.—(*Honourable Senator Nolin*).

Hon. Pierre Claude Nolin moved adoption of the report.

Motion agreed to and report adopted.

[English]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NINTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the ninth report of the Standing Committee on Internal Economy, Budgets and Administration (budget of certain Committees—legislation) presented in the Senate on November 29, 2001.—(*Honourable Senator Kroft*).

Hon. Richard H. Kroft moved the adoption of the report.

Motion agreed to and report adopted.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET—REPORT OF COMMITTEE ADOPTED

Leave having been given to revert to Order No. 4, Reports of Committees:

The Senate proceeded to consideration of the ninth report of the Standing Senate Committee on Energy, the Environment and Natural Resources (budget—release of additional funds) presented in the Senate on November 29, 2001.—(*Honourable Senator Taylor*).

Hon. Mira Spivak moved the adoption of the report.

Motion agreed to and report adopted.

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO STUDY MEASURES TO ENCOURAGE FRENCH-LANGUAGE BROADCASTING

On the Order:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Gill:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.—(*Honourable Senator LaPierre*).

Hon. Laurier LaPierre: Honourable senators, it is my pleasure and my duty to support Senator Gauthier's motion:

[*Translation*]

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.

[*English*]

I make my own statement on the purpose of this motion, which is to examine the feasibility of a national francophone community network. Furthermore, I share the desire of the CRTC —

[*Translation*]

The CRTC submitted its response to the Governor General's Order in Council dated April 5, 2000, asking the CRTC to propose measures to encourage and to promote a better balance, in a report entitled "Achieving a Better Balance." The CRTC said in its conclusion that it would propose measures to encourage and facilitate access to the widest range of French-language broadcasting services possible in these communities and to ensure that the diversity of French-language communities across Canada is reflected in the Canadian broadcasting system.

In an annual report, the *Fédération des communautés francophones et acadienne du Canada* informs us that it supports the report, but criticizes the CRTC for not doing more to improve conventional cable services and French-language broadcasting.

According to the federation's annual report, the day when this country's francophones have access to digital distribution is far off, however. The industry's most optimistic forecasts do not include phased-in implementation of this technology.

Honourable senators, the time has come to act.

[*English*]

Why? Because it is the Canadian way. Canada is a bilingual country. The benefits of bilingualism have been expressed in countless documents and statements, particularly in the fine report prepared by Senator Jean-Maurice Simard and presented to the Senate in November, 1989, entitled "Bridging the Gap: from Oblivion to the Rule of Law." In that report, he says something of great importance:

Commonly, parliamentarians have little interest in official language questions. All too little in fact because they have not taken the time to understand the actual impact of the

status and use of French and English as the official languages of Canada on the national psyche and on Canadians' pride in belonging to this country. Nor have they reflected sufficiently on Canada's future as a country or on Canadians' quality of life and prosperity now and in the future....

Linguistic duality is one of the main pillars on which Canada was built, a fundamental aspect of our country's history and future and a basic reality of the symbolic universe and daily lives of millions of Canadians.

• (15:40)

It is said, and I have done so countless times myself, that the cornerstone of the edifice of our Canadian values is based upon the acceptance of diversity. Diversity is a condition of our citizenship. The cornerstone of diversity is bilingualism, existing in law through the Official Languages Act, which states categorically that the Government of Canada is committed to it, as Senator Gauthier has demonstrated.

[*Translation*]

However, there is more. Francophone and Acadian communities must be able to express in French the dimensions and realities of their lives, they must be able to talk to each other and tell their story in French, and they must have the means to promote all facets of their culture.

Honourable senators, it is not easy to live in a minority situation. I experienced it for 15 years in British Columbia. We often did not have the necessary resources to be heard and to talk to people who shared our culture and our language across the country.

At one point, I even set up an open line at Radio-Canada, the French CBC. It involved francophone communities outside Quebec, but it was cancelled because Radio-Canada people in Montreal felt that we did not speak French well enough to be on the air.

It was very rare that Radio-Canada's television in Vancouver would offer programs designed by French-language minorities in Canada. Often, all that was shown about French Canadian minorities was mirrored to the keyhole of Radio-Canada, which was unreasonable and downright unacceptable.

[*English*]

To be a minority is to subject ourselves to a long litany of "bon-ententisme," to a list of slogans that have no reality and to enumerating a list of hopes that have to wait for a better day. To be a minority is to wait until it has convinced the majority to act; to be a minority is to accept to being a detail in the life of the nation.

During the 1960s, there was an explosion about language and culture in the city of Moncton focused on the students at the University of Moncton. The great Canadian movie filmmaker Michel Brault made an hour-long documentary on this issue. At the end of it, I will never forget this image of an Acadian woman and a Canadian woman sitting on their porch rocking and saying:

[*Translation*]

"Acadia is a detail; it is not important, it is just a detail!"

[English]

Honourable senators, this has been for too long the history of our people in a minority situation across Canada. We are not anybody's detail; we are a people who wish to be heard. We are a people who wish to be able to tell our stories to one another. In the final analysis, we want to stop the premise that, in order that our rights be protected, particularly in many aspects of radio broadcasting, we have to be satisfied with less in the name of the economically feasible, or in the stupid name of having reached the magical number that permits us to survive.

To be a minority is to have its existence mirror to the keyhole of the majority, and that is not acceptable to any of us.

[Translation]

In short, what do we want? Honourable senators, we want the necessary instruments to be able to speak to one another, to tell one another our stories, to forge links between one another across this vast land, as our English-speaking fellow citizens do.

We want the right for our children — in my case, my grandchildren — to grow up with full pride in their great and noble tradition. This, honourable senators, is why Senator Gauthier's motion is so very important.

[English]

In conclusion, it is said — and I have said it — that you cannot be in Canada without being of Canada. Often, the minorities of French language across the country are in Canada but are not recognized all the time as being of Canada. For that to happen, for us to be of Canada—

[Translation]

—we need the means. As with freedom, means are not simply given, they are taken.

[English]

Consequently, I have no doubt that we shall act in the traditions of the Canadian way by authorizing the Standing Senate Committee on Transport and Communications to examine and report upon the measures that should be taken to facilitate the fullest exposure of the French-speaking minorities of Canada to the widest possible range of French-language broadcasting services. To speed us along the way, may I be permitted to read what Sir Wilfrid Laurier declared on June 25, 1901:

I love my country because it resembles no other. I love my country because even in the difficulties which arise it calls forth from the noblest resolutions, the strongest, the most generous qualities of man. I love my country above all because it is unique in the world, because it is founded on respect for rights, on pride of origin, on harmony and concord between the races who inhabit it.

Our pride refuses to follow along the beaten path. Henceforth we must march along other roads and towards other horizons. Let us have in view only the

[Senator LaPierre]

development, the prosperity, the grandeur of our country. Let us keep in our heart this thought: "Canada first, Canada forever, nothing but Canada."

The Hon. the Speaker: Is the house ready for the question?

It was moved by the Honourable Senator Gauthier, seconded by the Honourable Senator Gill:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[Translation]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

COMMITTEE AUTHORIZED TO
STUDY TIME ALLOTTED FOR TRIBUTES

Hon. Jean Lapointe, pursuant to notice given November 21, 2001, moved:

That the Standing Senate Committee on Rules, Procedures and the Rights of Parliament be authorized to examine and report on the time allotted to tributes in the upper chamber.

Motion agreed to.

[English]

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET
DURING SITTING OF THE SENATE

Hon. Leonard J. Gustafson, pursuant to notice of November 28, 2001, moved:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 3:30 p.m. on Wednesday, December 5, 2001, to hear from the Minister for International Trade, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

The Hon. the Speaker: Honourable senators, as we have now completed the Orders of the Day and our Notice Paper, is it agreed that this sitting be adjourned during pleasure, to reassemble at approximately 5:25 p.m. for the purpose of resuming the sitting, calling in the senators and completing the recorded vote on the amendment of Senator Oliver to Bill S-31?

Hon. Senators: Agreed.

The Senate adjourned during pleasure.

• (1800)

The sitting of the Senate was resumed.

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT
NEGATIVED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other Acts.

On the motion in amendment of the Honourable Senator Oliver, seconded by the Honourable Senator Di Nino, that the Bill be not now read a third time but that it be amended in Clause 9, on page 3, by replacing line 31 with the following:

“(3) The directive is a statutory instru-”.

The Hon. the Speaker: Honourable senators, pursuant to the order of the house, we will proceed with a recorded division on the motion in amendment of the Honourable Senator Oliver.

Motion in amendment negatived on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	Keon
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Murray
Buchanan	Nolin
Carney	Prud'homme
Comeau	Robertson
Di Nino	Spivak
Forrestall	Stratton
Gustafson	Tkachuk
Johnson	Wilson—23
Kelleher	

NAYS

THE HONOURABLE SENATORS

Austin	Joyal
Banks	Kenny
Biron	Kolber
Bryden	Kroft
Callbeck	LaPierre
Carstairs	Lapointe
Chalifoux	Lawson
Christensen	Léger
Cook	Losier-Cool
Corbin	Maheu
Cordy	Mahovlich
Day	Milne
De Bané	Moore
Fairbairn	Morin
Ferretti Barth	Pearson
Finnerty	Phalen
Fraser	Poulin
Furey	Robichaud
Gauthier	Rompkey
Gill	Setlakwe
Grafstein	Sparrow
Graham	Stollery
Hervieux-Payette	Tunney
Hubley	Wiebe—49
Jaffer	

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, we will now return to third reading debate on Bill C-31.

On motion of Senator Tkachuk, debate adjourned.

The Senate adjourned until Wednesday, December 5, 2001, at 1:30 p.m.

APPENDIX

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

THE SPEAKER

THE HONOURABLE DANIEL P. HAYS

THE LEADER OF THE GOVERNMENT

THE HONOURABLE SHARON CARSTAIRS, P.C.

THE LEADER OF THE OPPOSITION

THE HONOURABLE JOHN LYNCH-STANTON

OFFICERS OF THE SENATE**CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

PAUL BÉLISLE

DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES

GARY O'BRIEN

LAW CLERK AND PARLIAMENTARY COUNSEL

MARK AUDCENT

USHER OF THE BLACK ROD (ACTING)

BLAIR ARMITAGE

THE MINISTRY

According to Precedence

(December 4, 2001)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. Herbert Eser Gray	Deputy Prime Minister
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Natural Resources and Minister responsible for the Canadian Wheat Board
The Hon. Brian Tobin	Minister of Industry
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Minister of Foreign Affairs
The Hon. Paul Martin	Minister of Finance
The Hon. Arthur C. Eggleton	Minister of National Defence
The Hon. Anne McLellan	Minister of Justice and Attorney General of Canada
The Hon. Allan Rock	Minister of Health
The Hon. Lawrence MacAulay	Solicitor General of Canada
The Hon. Alfonso Gagliano	Minister of Public Works and Government Services
The Hon. Lucienne Robillard	President of the Treasury Board and Minister responsible for Infrastructure
The Hon. Martin Cauchon	Minister of National Revenue and Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. Lyle Vanclicf	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Fisheries and Oceans
The Hon. Ronald J. Duhamel	Minister of Veterans Affairs and Secretary of State (Western Economic Diversification) (Francophonie)
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Maria Minna	Minister for International Cooperation
The Hon. Elinor Caplan	Minister for Citizenship and Immigration
The Hon. Sharon Carstairs	Leader of the Government in the Senate
The Hon. Robert G. Thibault	Minister of State (Atlantic Canada Opportunities Agency)
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. Hedy Fry	Secretary of State (Multiculturalism) (Status of Women)
The Hon. David Kilgour	Secretary of State (Latin America and Africa)
The Hon. James Scott Peterson	Secretary of State (International Financial Institutions)
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Gilbert Normand	Secretary of State (Science, Research and Development)
The Hon. Denis Coderre	Secretary of State (Amateur Sport)
The Hon. Rey Pagtakhan	Secretary of State (Asia-Pacific)

SENATORS OF CANADA

ACCORDING TO SENIORITY

(December 4, 2001)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-Centre-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuuaq, Que.
Daniel Phillip Hays, <i>Speaker</i>	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland	Port-au-Port, Nfld.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Gulf	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eyton	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
J. Michael Forrester	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis G. Johnson	Winnipeg-Interlake	Winnipeg, Man.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.

ACCORDING TO SENIORITY

Senator	Designation	Post Office Address
THE HONOURABLE		
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs, P.C.	Manitoba	Victoria Beach, Man.
Landon Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ontario
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	Tracadie	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Labrador	North West River, Labrador, Nfld.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Saint-Laurent, Que.
Nicholas William Taylor	Sturgeon	Chestermere, Alta.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinigan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Thelma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland	St. John's, Nfld.
Ross Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto, Ont.
Francis William Mahovlich	Toronto	Toronto, Ont.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Vivienne Poy	Toronto	Toronto, Ont.
Sheila Finestone, P.C.	Montarville	Montreal, Que.
Ione Christensen	Yukon Territory	Whitehorse, Y.T.
George Furey	Newfoundland and Labrador	St. John's, Nfld.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Isobel Finnerty	Ontario	Burlington, Ont.
John Wiebe	Saskatchewan	Swift Current, Sask.
Tommy Banks	Alberta	Edmonton, Alta.
Jane Cordy	Nova Scotia	Dartmouth, N.S.
Raymond C. Setlakwe	The Laurentides	Thetford Mines, Que.
Yves Morin	Lauson	Quebec, Que.
Elizabeth M. Hubley	Prince Edward Island	Kensington, P.E.I.
Jim Tunney	Ontario	Grafton, Ont.
Laurier L. LaPierre	Ontario	Ottawa, Ont.
Viola Léger	New Brunswick	Moncton, N.B.
Mobina S. B. Jaffer	British Columbia	North Vancouver, B.C.
Jean Lapointe	Sauvel	Magog, Que.
Gerard A. Phalen	Nova Scotia	Glace Bay, N.S.
Joseph A. Day	Saint John-Kennebecasis	Hampton, N.B.
Michel Biron	Mille Isles	Nicolet, Que.

SENATORS OF CANADA

ALPHABETICAL LIST

(December 4, 2001)

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Adams, Willie	Nunavut	Rankin Inlet, Nunavut	Lib
Andreychuk, A. Raynell	Regina	Regina, Sask.	PC
Angus, W. David	Alma	Montreal, Que.	PC
Atkins, Norman K.	Markham	Toronto, Ont.	PC
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.	Lib
Bacon, Lise	De la Durantaye	Laval, Que.	Lib
Banks, Tommy	Alberta	Edmonton, Alta.	Lib
Beaudoin, Gérald-A.	Rigaud	Hull, Que.	PC
Biron, Michel	Mille Isles	Nicolet, Que.	Lib
Bolduc, Roch	Gulf	Sainte-Foy, Que.	PC
Bryden, John G.	New Brunswick	Bayfield, N.B.	Lib
Buchanan, John, P.C.	Halifax	Halifax, N.S.	PC
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.	Lib
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.	PC
Carstairs, Sharon, P.C.	Manitoba	Victoria Beach, Man.	Lib
Chalifoux, Thelma J.	Alberta	Morinville, Alta.	Lib
Christensen, Ione	Yukon Territory	Whitehorse, Y.T.	Lib
Cochrane, Ethel	Newfoundland	Port-au-Port, Nfld.	PC
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.	PC
Cook, Joan	Newfoundland	St. John's, Nfld.	Lib
Cools, Anne C.	Toronto-Centre-York	Toronto, Ont.	Lib
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.	Lib
Cordy, Jane	Nova Scotia	Dartmouth, N.S.	Lib
Day, Joseph A.	Saint John-Kennebecasis	Hampton, N.B.	Lib
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.	Lib
Di Nino, Consiglio	Ontario	Downsview, Ont.	PC
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld.	PC
Eyton, J. Trevor	Ontario	Caledon, Ont.	PC
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.	Lib
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.	Lib
Finestone, Sheila, P.C.	Montarville	Montreal, Que.	Lib
Finnerty, Isobel	Ontario	Burlington, Ont.	Lib
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.	Lib
Forrestall, J. Michael	Dartmouth and the Eastern Shore	Dartmouth, N.S.	PC
Fraser, Joan Thorne	De Lorimier	Montreal, Que.	Lib
Furey, George	Newfoundland and Labrador	St. John's, Nfld.	Lib
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.	Lib
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.	Lib
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.	Lib
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.	Lib
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.	PC
Hays, Daniel Phillip, <i>Speaker</i>	Calgary	Calgary, Alta.	Lib
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.	Lib
Hubley, Elizabeth M.	Prince Edward Island	Kensington, P.E.I.	Lib
Jaffer, Mobina S. B.	British Columbia	North Vancouver, B.C.	Lib
Johnson, Janis G.	Winnipeg-Interlake	Winnipeg, Man.	PC
Joyal, Serge, P.C.	Kennebec	Montreal, Que.	Lib
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.	PC
Kenny, Colin	Rideau	Ottawa, Ont.	Lib
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.	PC
Kinsella, Noël A.	Fredericton-York-Sunbury	Fredericton, N.B.	PC
Kirby, Michael	South Shore	Halifax, N.S.	Lib

SENATORS OF CANADA

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Kolber, E. Leo	Victoria	Westmount, Que.	Lib
Kroft, Richard H.	Manitoba	Winnipeg, Man.	Lib
LaPierre, Laurier L.	Ontario	Ottawa, Ont.	Lib
Lapointe, Jean	Saurel	Magog, Que.	Lib
Lawson, Edward M.	Vancouver	Vancouver, B.C.	Ind
LeBreton, Marjory	Ontario	Manotick, Ont.	PC
Léger, Viola	New Brunswick	Moncton, N.B.	Lib
Losier-Cool, Rose-Marie	Tracadie	Bathurst, N.B.	Lib
Lynch-Staunton, John	Grandville	Georgeville, Que.	PC
Maheu, Shirley	Rougemont	Saint-Laurent, Que.	Lib
Mahovich, Francis William	Toronto	Toronto, Ont.	Lib
Meighen, Michael Arthur	St. Marys	Toronto, Ont.	PC
Milne, Lorna	Peel County	Brampton, Ont.	Lib
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.	Lib
Morin, Yves	Lauzon	Quebec, Que.	Lib
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.	PC
Nolin, Pierre Claude	De Salaberry	Quebec, Que.	PC
Oliver, Donald H.	Nova Scotia	Halifax, N.S.	PC
Pearson, Landon	Ontario	Ottawa, Ontario	Lib
Pépin, Lucie	Shawinigan	Montreal, Que.	Lib
Phalen, Gerard A.	Nova Scotia	Glace Bay, N.S.	Lib
Pitfield, Peter Michael, P.C.	Ottawa-Vanier	Ottawa, Ont.	Ind
Poulin, Marie-P.	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.	Lib
Poy, Vivienne	Toronto	Toronto, Ont.	Lib
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.	Ind
Rivest, Jean-Claude	Stadacona	Quebec, Que.	PC
Robertson, Brenda Mary	Riverview	Shediac, N.B.	PC
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.	Lib
Roche, Douglas James.	Edmonton	Edmonton, Alta.	Ind
Rompkey, William H., P.C.	Labrador	North West River, Labrador, Nfld.	Lib
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.	PC
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.	CA
Setlakwe, Raymond C.	The Laurentides	Thetford Mines, Que.	Lib
Sibbeston, Nick G.	Northwest Territories	Fort Simpson, N.W.T.	Lib
Sparrow, Herbert O.	Saskatchewan	North Battleford, Sask.	Lib
Spivak, Mira	Manitoba	Winnipeg, Man.	PC
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.	Lib
Stratton, Terrance R.	Red River	St. Norbert, Man.	PC
Taylor, Nicholas William	Sturgeon	Chestermere, Alta.	Lib
Tkachuk, David	Saskatchewan	Saskatoon, Sask.	PC
Tunney, Jim	Ontario	Grafton, Ont.	Lib
Watt, Charlie	Inkerman	Kuujuuaq, Que.	Lib
Wiebe, John	Saskatchewan	Swift Current, Sask.	Lib
Wilson, The Very Reverend Dr. Lois M.	Toronto	Toronto, Ont.	Ind

SENATORS OF CANADA

BY PROVINCE AND TERRITORY

(December 4, 2001)

ONTARIO—24

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Lowell Murray, P.C.	Pakenham	Ottawa
2	Peter Alan Stollery	Bloor and Yonge	Toronto
3	Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa
4	Jerahmiel S. Grafstein	Metro Toronto	Toronto
5	Anne C. Cools	Toronto-Centre-York	Toronto
6	Colin Kenny	Rideau	Ottawa
7	Norman K. Atkins	Markham	Toronto
8	Consiglio Di Nino	Ontario	Downsview
9	James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
10	John Trevor Eyton	Ontario	Caledon
11	Wilbert Joseph Keon	Ottawa	Ottawa
12	Michael Arthur Meighen	St. Marys	Toronto
13	Marjory LeBreton	Ontario	Manotick
14	Landon Pearson	Ontario	Ottawa
15	Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
16	Lorna Milne	Peel County	Brampton
17	Marie-P. Poulin	Northern Ontario	Ottawa
18	The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto
19	Francis William Mahovlich	Toronto	Toronto
20	Vivienne Poy	Toronto	Toronto
21	Isobel Finnerty	Ontario	Burlington
22	Jim Tunney	Ontario	Grafton
23	Laurier L. LaPierre	Ontario	Ottawa
24			

SENATORS BY PROVINCE AND TERRITORY

QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber	Victoria	Westmount
2 Charlie Watt	Inkerman	Kuujuuaq
3 Pierre De Bané, P.C.	De la Vallière	Montreal
4 Roch Bolduc	Gulf	Sainte-Foy
5 Gérard-A. Beaudoin	Rigaud	Hull
6 John Lynch-Staunton	Grandville	Georgeville
7 Jean-Claude Rivest	Stadacona	Quebec
8 Marcel Prud'homme, P.C.	La Salle	Montreal
9 W. David Angus	Alma	Montreal
10 Pierre Claude Nolin	De Salaberry	Quebec
11 Lise Bacon	De la Durantaye	Laval
12 Céline Hervieux-Payette, P.C.	Bedford	Montreal
13 Shirley Maheu	Rougemont	Ville de Saint-Laurent
14 Lucie Pépin	Shawinigan	Montreal
15 Marisa Ferretti Barth	Repentigny	Pierrefonds
16 Serge Joyal, P.C.	Kennebec	Montreal
17 Joan Thorne Fraser	De Lorimier	Montreal
18 Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
19 Sheila Finestone, P.C.	Montarville	Montreal
20 Raymond C. Setlakwe	The Laurentides	Thetford Mines
21 Yves Morin	Lauzon	Quebec
22 Jean Lapointe	Saurel	Magog
23 Michel Biron	Mille Isles	Nicolet
24		

SENATORS BY PROVINCE—MARITIME DIVISION

NOVA SCOTIA—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2 Michael Kirby	South Shore	Halifax
3 Gerald J. Comeau	Nova Scotia	Church Point
4 Donald H. Oliver	Nova Scotia	Halifax
5 John Buchanan, P.C.	Halifax	Halifax
6 J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7 Wilfred P. Moore	Stanhope St./Bluenose	Chester
8 Jane Cordy	Nova Scotia	Dartmouth
9 Gerard A. Phalen	Nova Scotia	Glace Bay
10		

NEW BRUNSWICK—10

THE HONOURABLE		
1 Eymard Georges Corbin	Grand-Sault	Grand-Sault
2 Brenda Mary Robertson	Riverview	Shediac
3 Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton
4 John G. Bryden	New Brunswick	Bayfield
5 Rose-Marie Losier-Cool	Tracadie	Bathurst
6 Fernand Robichaud, P.C.	Saint-Louis-de-Kent	Saint-Louis-de-Kent
7 Viola Léger	New Brunswick	Moncton
8 Joseph A. Day	Saint John-Kennebecasis	Hampton
9		
10		

PRINCE EDWARD ISLAND—4

THE HONOURABLE		
1 Eileen Rossiter	Prince Edward Island	Charlottetown
2 Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3 Elizabeth M. Hubley	Prince Edward Island	Kensington
4		

SENATORS BY PROVINCE—WESTERN DIVISION

MANITOBA—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Mira Spivak	Manitoba	Winnipeg
2 Janis G. Johnson	Winnipeg-Interlake	Winnipeg
3 Terrance R. Stratton	Red River	St. Norbert
4 Sharon Carstairs, P.C.	Manitoba	Victoria Beach
5 Richard H. Kroft	Manitoba	Winnipeg
6

BRITISH COLUMBIA—6

THE HONOURABLE		
1 Edward M. Lawson	Vancouver	Vancouver
2 Jack Austin, P.C.	Vancouver South	Vancouver
3 Pat Carney, P.C.	British Columbia	Vancouver
4 Gerry St. Germain, P.C.	Langley-Pemberton-Whistler .	Maple Ridge
5 Ross Fitzpatrick	Okanagan-Similkameen	Kelowna
6 Mobina S.B. Jaffer.	British Columbia	North Vancouver

SASKATCHEWAN—6

THE HONOURABLE		
1 Herbert O. Sparrow	Saskatchewan	North Battleford
2 A. Raynell Andreychuk	Regina	Regina
3 Leonard J. Gustafson	Saskatchewan	Macoun
4 David Tkachuk	Saskatchewan	Saskatoon
5 John Wiebe	Saskatchewan	Swift Current
6

ALBERTA—6

THE HONOURABLE		
1 Daniel Phillip Hays, <i>Speaker</i>	Calgary	Calgary
2 Joyce Fairbairn, P.C.	Lethbridge	Lethbridge
3 Nicholas William Taylor.	Sturgeon	Chestermere
4 Thelma J. Chalifoux	Alberta	Morinville
5 Douglas James Roche	Edmonton	Edmonton
6 Tommy Banks	Alberta	Edmonton

SENATORS BY PROVINCE AND TERRITORY

NEWFOUNDLAND—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody	Harbour Main-Bell Island	St. John's
2 Ethel Cochrane	Newfoundland	Port-au-Port
3 William H. Rompkey, P.C.	Labrador	North West River, Labrador
4 Joan Cook	Newfoundland	St. John's
5 George Furey	Newfoundland and Labrador	St. John's
6		

NORTHWEST TERRITORIES—1

THE HONOURABLE		
1 Nick G. Sibbeston	Northwest Territories	Fort Simpson

NUNAVUT—1

THE HONOURABLE		
1 Willie Adams	Nunavut	Rankin Inlet

YUKON TERRITORY—1

THE HONOURABLE		
1 Ione Christensen	Yukon Territory	Whitehorse

ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES
(As of December 4, 2001)

*Ex Officio Member

ABORIGINAL PEOPLES

Chair: Honourable Senator Chalifoux		Deputy Chair: Honourable Senator Johnson	
Honourable Senators:			
Carney,	Christensen,	Johnson,	Pearson,
*Carstairs (or Robichaud),	Cochrane,	Léger,	Sibbeston,
Chalifoux,	Gill,	*Lynch-Staunton (or Kinsella),	St. Germain,
	Hubley,		Tkachuk.

Original Members as nominated by the Committee of Selection
Carney, *Carstairs (or Robichaud), Chalifoux, Christensen, Cochrane, Cordy, Gill,
Johnson, *Lynch-Staunton (or Kinsella), Pearson, Rompkey, Sibbeston, Tkachuk, Wilson.

AGRICULTURE AND FORESTRY

Chair: Honourable Senator Gustafson		Deputy Chair: Honourable Senator Wiebe	
Honourable Senators:			
Biron,	Day,	*Lynch-Staunton (or Kinsella),	Stratton,
*Carstairs (or Robichaud),	Gustafson,	Oliver,	Tkachuk,
Chalifoux,	Hubley,	Phalen,	Tunney,
	LeBreton,		Wiebe.

Original Members as nominated by the Committee of Selection
*Carstairs (or Robichaud), Chalifoux, Fairbairn, Fitzpatrick, Gill, Gustafson, LeBreton,
*Lynch-Staunton (or Kinsella), Milne, Oliver, Stratton, Taylor, Tkachuk, Wiebe.

BANKING, TRADE AND COMMERCE

Chair: Honourable Senator Kolber		Deputy Chair: Honourable Senator Tkachuk	
Honourable Senators:			
Angus,	Hervieux-Payette,	*Lynch-Staunton (or Kinsella),	Poulin,
*Carstairs (or Robichaud),	Kelleher,	Meighen,	Setlakwe,
Furey,	Kolber,	Oliver,	Tkachuk,
	Kroft,		Wiebe.

Original Members as nominated by the Committee of Selection
Angus, *Carstairs (or Robichaud), Furey, Hervieux-Payette, Kelleher, Kolber, Kroft,
*Lynch-Staunton (or Kinsella), Meighen, Oliver, Poulin, Setlakwe, Tkachuk, Wiebe.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

Chair: Honourable Senator Taylor

Honourable Senators:

Adams,
Banks,
Buchanan,
*Carstairs
(or Robichaud).

Christensen,
Cochrane,
Eyton,
Finnerty,

Deputy Chair: Honourable Senator Spivak

Kelleher,
Kenny,
*Lynch-Staunton
(or Kinsella),
Sibbeston,
Spivak,
Taylor.

Original Members as nominated by the Committee of Selection

*Banks, Buchanan, *Carstairs (or Robichaud), Christensen, Cochrane, Eyton, Finnerty, Kelleher, Kenny, *Lynch-Staunton (or Kinsella), Sibbeston, Spivak, Taylor, Watt.*

FISHERIES

Chair: Honourable Senator Comeau

Honourable Senators:

Adams,
*Carstairs
(or Robichaud),
Comeau,

Cook,
Jaffer,
Johnson,

Deputy Chair: Honourable Senator Cook

*Lynch-Staunton
(or Kinsella),
Mahovlich,
Meighen,
Phalen,
Robertson,
Tunney,
Watt.

Original Members as nominated by the Committee of Selection

*Adams, Callbeck, *Carstairs (or Robichaud), Carney, Chalifoux, Comeau, Cook, *Lynch-Staunton (or Kinsella), Mahovlich, Meighen, Molgat, Moore, Robertson, Watt.*

FOREIGN AFFAIRS

Chair: Honourable Senator Stollery

Honourable Senators:

Andreychuk,
Austin,
Bolduc,
Carney,
*Carstairs
(or Robichaud),
Corbin,
De Bané,

Deputy Chair: Honourable Senator Andreychuk

Di Nino,
Grafstein,
Graham,
Losier-Cool,
*Lynch-Staunton
(or Kinsella),
Setlakwe,
Stollery.

Original Members as nominated by the Committee of Selection

*Andreychuk, Austin, Bolduc, Carney, *Carstairs (or Robichaud), Corbin, De Bané, Di Nino, Grafstein, Graham, Losier-Cool, *Lynch-Staunton (or Kinsella), Poulin, Stollery.*

HUMAN RIGHTS

Chair: Honourable Senator Andreychuk		Deputy Chair: Honourable Senator Finestone	
Honourable Senators:			
Andreychuk,	Cochrane,	Kinsella,	Poy,
Beaudoin,	Ferretti Barth,	*Lynch-Staunton	Taylor,
*Carstairs	Finestone,	(or Kinsella),	Wilson.
(or Robichaud),			

Original Members as nominated by the Committee of Selection
*Andreychuk, Beaudoin, *Carstairs (or Robichaud), Ferretti Barth, Finestone,*
*Kinsella, *Lynch-Staunton (or Kinsella), Oliver, Poy, Watt, Wilson.*

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

Chair: Honourable Senator Kroft		Deputy Chair: Honourable Senator	
Honourable Senators:			
Atkins	De Bané,	Kenny,	Maheu,
Austin,	Doody,	Kroft,	Milne,
*Carstairs	Forrestall,	LaPierre,	Murray,
(or Robichaud),	Furey,	*Lynch-Staunton	Stollery.
Comeau,	Gauthier,	(or Kinsella),	

Original Members as nominated by the Committee of Selection
*Austin, *Carstairs (or Robichaud), Comeau, De Bané, DeWare, Doody, Forrestall, Furey, Gauthier,*
*Kenny, Kroft, *Lynch-Staunton (or Kinsella), Maheu, Milne, Murray, Poulin, Stollery.*

LEGAL AND CONSTITUTIONAL AFFAIRS

Chair: Honourable Senator Milne		Deputy Chair: Honourable Senator Beaudoin	
Honourable Senators:			
Andreychuk,	Cools,	Joyal,	Moore,
Beaudoin,	Di Nino	*Lynch-Staunton (or Kinsella),	Nolin,
*Carstairs (or Robichaud),	Fraser,	Milne,	Pearson,
	Grafstein,		Rivest.

Original Members as nominated by the Committee of Selection
*Andreychuk, Atkins, Beaudoin, Buchanan, *Carstairs (or Robichaud), Cools, Fraser, Grafstein,*
*Joyal, *Lynch-Staunton (or Kinsella), Milne, Moore, Nolin, Pearson.*

LIBRARY OF PARLIAMENT (Joint)**Chair: Honourable Senator Bryden****Deputy Chair:****Honourable Senators:**

Beaudoin,

Cordy,

Oliver,

Poy.

Bryden.

*Original Members agreed to by Motion of the Senate**Beaudoin, Bryden, Cordy, Oliver, Poy.***NATIONAL FINANCE****Chair: Honourable Senator Murray****Deputy Chair: Honourable Senator Finnerty****Honourable Senators:**

Banks,

Cools,

Furey,

Mahovlich,

Bolduc,

Doody,

Kinsella,

Murray,

*Carstairs

Ferretti Barth,

*Lynch-Staunton

Stratton,

(or Robichaud),

Finnerty,

(or Kinsella),

Tunney.

*Original Members as nominated by the Committee of Selection**Banks, Bolduc, *Carstairs (or Robichaud), Cools, Doody, Finnerty, Ferretti Barth, Hervieux-Payette, Kinsella, Kirby, *Lynch-Staunton (or Kinsella), Mahovlich, Murray, Stratton.***NATIONAL SECURITY AND DEFENCE****Chair: Honourable Senator Kenny****Deputy Chair: Honourable Senator Forrestall****Honourable Senators:**

Banks,

Day,

LaPierre,

Meighen,

*Carstairs

Forrestall,

*Lynch-Staunton

Nolin,

(or Robichaud),

Kenny,

(or Kinsella),

Wiebe.

Cordy,

*Original Members as nominated by the Committee of Selection**Atkins, *Carstairs (or Robichaud), Cordy, Forrestall, Hubley, Kenny,***Lynch-Staunton (or Kinsella), Meighen, Pépin, Rompkey, Wiebe.*

VETERANS AFFAIRS

(Subcommittee of National Security and Defence)

Chair: Honourable Senator Meighen

Deputy Chair: Honourable Senator Wiebe

Honourable Senators:

*Carstairs (or Robichaud),	Forrestall, Kenny,	*Lynch-Staunton (or Kinsella),	Meighen, Wiebe.
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Day,

OFFICIAL LANGUAGES (Joint)

Chair: Honourable Senator Maheu

Deputy Chair:

Honourable Senators:

Beaudoin,	Bolduc	Léger,	Maheu,
Biron,	Gauthier,		Setlatkwe.

Original Members agreed to by Motion of the Senate

Bacon, Beaudoin, Fraser, Gauthier, Losier-Cool, Maheu, Rivest, Setlatkwe, Simard.

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

Chair: Honourable Senator Austin

Deputy Chair: Honourable Senator Stratton

Honourable Senators:

Andreychuk,	*Carstairs (or Robichaud),	Joyal,	Pitfield,
Austin,		Kroft,	Poulin,
Beaudoin,	Di Nino,	Losier-Cool,	Robertson,
Bryden,	Gauthier,	*Lynch-Staunton (or Kinsella),	Rossiter,
	Grafstein,		Stratton.

Original Members as nominated by the Committee of Selection

*Andreychuk, Austin, Bryden, *Carstairs (or Robichaud), DeWare, Di Nino, Gauthier, Grafstein, Hervieux-Payette, Joyal, Kroft, Losier-Cool, *Lynch-Staunton (or Kinsella), Murray, Poulin, Rossiter, Stratton.*

SCRUTINY OF REGULATIONS (Joint)

Chair: Honourable Senator Hervieux-Payette

Deputy Chair:

Honourable Senators:

Bryden,	Hervieux-Payette,	Kinsella,	Nolin.
Finestone,	Jaffer,	Moore,	

Original Members agreed to by Motion of the Senate

Bacon, Bryden, Finestone, Hervieux-Payette, Kinsella, Moore, Nolin.

SELECTION

Chair: Honourable Senator Rompkey

Deputy Chair: Honourable Senator Stratton

Honourable Senators:

Austin,	Corbin,	Kinsella,	Robertson,
*Carstairs (or Robichaud),	Fairbairn,	LeBreton,	Rompkey,
	Graham,	*Lynch-Staunton (or Kinsella),	Stratton.

Original Members agreed to by Motion of the Senate

*Austin, *Carstairs (or Robichaud), Corbin, DeWare, Fairbairn, Graham, Kinsella
LeBreton, *Lynch-Staunton (or Kinsella), Mercier, Murray.*

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

Chair: Honourable Senator Kirby

Deputy Chair: Honourable Senator LeBreton

Honourable Senators:

Callbeck,	Di Nino,	LeBreton,	Morin,
*Carstairs (or Robichaud),	Fairbairn,	Léger,	Roberston,
Cook,	Keon,	*Lynch-Staunton (or Kinsella),	Roche.
Cordy,	Kirby,		

Original Members as nominated by the Committee of Selection

*Callbeck, *Carstairs (or Robichaud), Cohen, Cook, Cordy, Fairbairn, Graham, Johnson,
Kirby, LeBreton, *Lynch-Staunton (or Kinsella), Pépin, Robertson, Roche.*

**ON THE PRESERVATION AND
PROMOTION OF A SENSE OF CANADIAN COMMUNITY**

(Subcommittee of Social Affairs, Science and Technology)

**Chair: Honourable Senator
Honourable Senators:**

*Carstairs
(or Robichaud),

Cook,
Cordy,

Deputy Chair: Honourable Senator

Kirby,
LeBreton,

*Lynch-Staunton
(or Kinsella),

Roberston.

TRANSPORT AND COMMUNICATIONS

**Chair: Honourable Senator Bacon
Honourable Senators:**

Adams,
Bacon,
Biron,
Callbeck,

*Carstairs
(or Robichaud),
Eyton,
Finestone,

Deputy Chair: Honourable Senator Oliver

Gill,
Gustafson,
LaPierre,
*Lynch-Staunton
(or Kinsella),

Oliver,
Spivak,
Taylor.

Original Members as nominated by the Committee of Selection

*Adams, Angus, Bacon, Callbeck, *Carstairs (or Robichaud), Christensen, Eyton, Finestone,
Fitzpatrick, Forrestall, *Lynch-Staunton (or Kinsella), Rompkey, Setlakwe, Spivak.*

THE SPECIAL SENATE COMMITTEE ON ILLEGAL DRUGS

**Chair: Honourable Senator Nolin
Honourable Senators:**

Banks,
*Carstairs
(or Robichaud),

Kenny,

Deputy Chair: Honourable Senator Kenny

*Lynch-Staunton
(or Kinsella),
Maheu,

Nolin,
Rossiter.

Original Members as agreed to by Motion of the Senate

*Banks, *Carstairs (or Robichaud), Kenny, *Lynch-Staunton (or Kinsella), Maheu, Nolin, Rossiter.*

THE SPECIAL SENATE COMMITTEE ON THE SUBJECT MATTER OF BILL C-36**Chair: Honourable Senator Fairbairn****Honourable Senators:**

Andreychuk, *Carstairs
Beaudoin, (or Robichaud),
Bryden, Fairbairn,
 Fraser,
 Furey,

Deputy Chair: Honourable Senator Kelleher

Jaffer, Lynch-Staunton,
Kelleher, Murray,
*Lynch-Staunton Phalen,
 (or Kinsella), Poulin.

Original Members as agreed to by Motion of the Senate

*Andreychuk, Bacon, Beaudoin, *Carstairs (or Robichaud), Fairbairn, Fraser, Furey, Jaffer,
Kelleher, Kenny, *Lynch-Staunton (or Kinsella), Murray, Stollery, Tkachuk.*

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CANADA

Debates of the Senate

1st SESSION

• 37th PARLIAMENT

• VOLUME 139

• NUMBER 77

OFFICIAL REPORT
(HANSARD)

Wednesday, December 5, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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THE SENATE

Wednesday, December 5, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

[Translation]

SENATORS' STATEMENTS

WORLD AIDS DAY

Hon. Lucie Pépin: Honourable Senators, on December 1, the 14th World AIDS Day was celebrated in every country around the globe. The event, which commemorates the identification of the HIV virus, was focussed on access to antiretroviral drugs and on public education.

According to a report by the UN on AIDS, despite progress in treatment, AIDS continues to make terrible inroads in industrialized countries and in developing countries. This devastating disease has already killed over 20 million people, and 40 million others have contracted it. In 2001 alone, over 5 million people, including 800,000 children, were infected.

Right now, HIV/AIDS is the primary cause of death in sub-Saharan Africa, which accounts for 70 per cent of the world's seropositive population. In some African countries, such as Malawi, Mozambique or Zambia, life expectancy has been cut by 20 years because of this disease. In Botswana, life expectancy has dropped from 62 to 37 years.

The rates of infection of the disease continue to climb as well in Asia, Eastern Europe, the Middle East, Latin America and the Caribbean. These countries are already overwhelmed by socio-economic problems, and AIDS poses a serious threat to their development and social stability.

We can draw only one conclusion from all this, which is that we cannot let our guard down. The fact that we hear less about AIDS does not mean that everything is resolved. On the contrary, the various epidemiological data indicate that the AIDS epidemic has not backed off and even threatens to start up again.

Canada's report on AIDS and HIV for 2001 concurs in this regard. It indicates that Canadians are vulnerable to HIV. According to the conclusions of this study, there is a possibility the epidemic may revive once again, especially among the Native population, gays and prison inmates.

It is unfortunate, but it seems that, in industrialized countries, advances in the treatment and handling of this disease have gone hand in hand with a relaxation of preventive measures. Despite

advances in treatment, prevention remains the best weapon against the HIV virus.

Let us not be alarmists, but let us be vigilant! We must understand that the problem has not been resolved, quite the contrary. The statistics show this clearly.

[English]

NATIONAL SECURITY AND DEFENCE

Hon. J. Michael Forrestall: Honourable senators, I have a brief comment or two that I would like to make, and on the basis of which I will ask questions tomorrow. This will be of interest to the Leader of the Government in the Senate. I have at hand a copy of an e-mail, I suppose, from David Lenarcic to Mark Mayhew, dated 6/12/01, 9:42 a.m:

Subject: Senate Defence Committee

Some items of interest.

1) We expect a call this morning from the Clerk —

— presumably the clerk of the Standing Senate Committee on National Security and Defence —

— informing us of the results of the Committee's future business meeting last night. We then plan to send an e-mail to OPLs —

— that is "very important people," incidentally —

— with further details regarding the 21 June information session and to get to work on scheduling some type of prep sessions. We already know, for instance, that the Committee wants presentations no longer than 15 min in order to allow a 45min question period. At this point, however, we're more interested in learning the fate of our proposed agenda.

2) The Defence Committee's budget 01-02 — a copy of which you saw last week — was adopted without debate by the Senate yesterday. It therefore looks like they will indeed travel in the Fall.

3) In response to yet another MHP question from Senator Forrestall yesterday, Sharon Carstairs revealed that she had had a "very thorough briefing" on the subject that morning (It went on for an hour and a half, she said). She added: "It is the kind of information that I hope we can make available to all members of this chamber when the Committee of the Whole meets next fall." We've left a message with Paul LeBrosse — (MHP PMO) asking if he knows anything about this briefing.

THE LATE DONALD MCPHERSON

Hon. Francis William Mahovlich: Honourable senators, a great Canadian trivia question is: Who won the men's world figure skating championship in 1963?

Canadian world champion figure skater Donald McPherson, of Stratford, Ontario, has passed away at his home in Munich, Germany. In 1959 he was the Canadian junior men's champion. The next year, he finished in 10th place at the Winter Olympics in Squaw Valley at 14 years of age: a remarkable achievement.

In 1963, he was the first man to win the Canadian, North American, and World Senior Men's title all in one year, without ever having won any of them before. He was also the first man to jump from fourth to first place in the world championships and remains the youngest man ever to win the world title. Two years later, he won the Men's World Professional Championships.

• (1340)

After winning the world's championship, he toured Europe for 10 years with Holiday on Ice where he dazzled audiences with his unique footwork, eventually becoming a highly respected coach and skating director for the tour. Inducted into the Canada Sports Hall of Fame and the Canadian Figure Skating Hall of Fame, he leaves behind many friends in the skating world, and will never be forgotten.

CORRESPONDENCE IN OPPOSITION TO ANTI-TERRORISM BILL

Hon. Gerry St. Germain: Honourable senators, since the tabling of Bill C-36, my office, along with most other senators' offices, have been receiving correspondence on these anti-terrorism measures. In the past two weeks alone, I have received hundreds of e-mails. Apparently, it is not unusual for us to receive opinions for and against various subjects that come before us. What is different is that I have not received, apparently, from the correspondence I have seen, one comment in support of this legislation.

While everyone agrees that we desperately need to strengthen our security mechanisms so that terrorist actions on our soil are prevented, the Canadian public is clearly concerned that the fundamental freedoms they have fought wars over are now being held in harm's way by a government and a small group of people who cannot really be trusted. At a very minimum, many of them want to see a sunset clause in Bill C-36. Canadians may trust the Prime Minister on many issues, but most British Columbians do not trust him and his small band on protecting their freedoms, apparently. As Benjamin Franklin once said, "Anyone who trades liberty for security deserves neither liberty nor security."

Honourable senators, I have excerpts from several e-mails here. I will read one of them from B.C., which states:

To the last line of defence — our Watchdogs, the Senators. Often it has been said that Senators do nothing but

I have always thought it prudent to have another group of eyes to watch what is being passed in the House of Commons. Call it a safeguard, if you would. Now is the time for those watchdogs to protect from us the House of Commons intentions. Sometimes, this being one of those times, I think the MPs consider themselves anointed rather than elected, especially when there is little effective opposition. I am hoping you senators will take our freedom more seriously than they do.

I have another quote from Vancouver, B.C. which states:

Please do not pass this bill into law. We already have legislation in place to deal with the threat of terrorists in Canada. This Bill has the potential to deny law-abiding Canadians fundamental rights and freedoms for which my grandfather and father fought.

Honourable senators, I could go on, but what is important here is that we are receiving a lot of information on this very contentious bill. I think we should pay heed and be very prudent in the way we proceed.

THE RIGHT HONOURABLE ROMÉO LEBLANC

CONGRATULATIONS ON APPOINTMENT AS CHANCELLOR OF
UNIVERSITY OF MONCTON

Hon. Joseph A. Day: Honourable senators, I should like to bring to your attention yet another award received by one of our former members of this chamber. The news release states:

Educator, journalist, politician, senator, former speaker in the Senate, former Governor General of Canada, Roméo LeBlanc has been all of these things and more. Memramcook's most famous son and one of New Brunswick's most famous sons will succeed Antoinette Maillet and become the University de Moncton's sixth chancellor since it was created in 1963.

Hon. Senators: Hear, hear!

[Translation]

ROUTINE PROCEEDINGS

AUDITOR GENERAL

2001 ANNUAL REPORT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table the report of the Auditor General for the year 2001, pursuant to the Auditor General Act, R.S. 1995, chapter 43, section 3.

[English]

BANKING, TRADE AND COMMERCE

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. E. Leo Kolber, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, December 5, 2001

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

TWELFTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, March 20, 2001, to examine and report upon the present state of the domestic and international financial system, respectfully requests the release of an additional \$12,000.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of May 29, 2001. On June 5, 2001, the Senate approved the release of an initial \$18,000 to the Committee.

The Report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

E. LEO KOLBER
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "A", p. 1070.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kolber, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE PRESENTED

Hon. Jack Austin, Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented the following report:

Wednesday, December 5, 2001

The Standing Committee on Rules, Procedures and the Rights of Parliament (*formerly entitled the Standing*

Committee on Privileges, Standing Rules and Orders) has the honour to present its

EIGHTH REPORT

Your Committee has considered the issue of senators indicted and subject to judicial proceedings and recommends that:

(a) the Senate amend the *Rules of the Senate* by replacing rules 137 and 138 with rules 137 to 142, attached as Appendix A;

(b) the Senate, pursuant to section 59 of the *Parliament of Canada Act*, make the *Regulations Amending the Senate Sessional Allowance (Suspension) Regulations*, attached as Appendix B;

(c) the Senate, pursuant to section 59 of the *Parliament of Canada Act*, make the *Regulations Amending the Senate Sessional Allowance (Deductions for Non-attendance) Regulations*, attached as Appendix C; and

(d) the Clerk be instructed to transmit copies in both official languages of the *Regulations amending the Senate Sessional Allowance (Suspension) Regulations* and the *Regulations amending the Senate Sessional Allowance (Deductions for Non-attendance) Regulations* to the Clerk of the Privy Council for registration and publication under the *Statutory Instruments Act*.

Respectfully submitted,

JACK AUSTIN, P.C.
Chair

(For text of appendices, see today's Journals of the Senate, Appendix "B", p. 1071.)

The Hon. the Speaker: Honourable senators when shall this report be taken into consideration?

On motion of Senator Austin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

APPROPRIATION BILL NO. 3, 2001-02

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-45, for granting to Her Majesty certain sums of money for the Public Service of Canada for the financial year ending March 31, 2002.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[Translation]

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-35, to amend the Foreign Missions and International Organizations Act, to which they desire the concurrence of the Senate.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Graham, bill placed on the Orders of the Day for second reading two days hence.

• (1350)

CANADIAN NATO PARLIAMENTARY ASSOCIATION

DEFENCE AND SECURITY AND POLITICAL SCIENCE AND TECHNOLOGY COMMITTEES MEETING, NOVEMBER 7-9, 2001—
REPORT OF CANADIAN DELEGATION TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to present the ninth report of the Canadian NATO Parliamentary Association. This is the report of the official delegation which represented Canada at the meeting of the NATO Parliamentary Assembly Committees on Defence and Security and Political Science and Technology held at Kiev, Ukraine, from November 7 to 9, 2001.

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Lise Bacon: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Committee on Transport and Communications have the power to sit at 5:30 p.m. today, Wednesday, December 5, 2001, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[English]

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. E. Leo Kolber: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 3:30 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET
DURING SITTING OF THE SENATE

Hon. Leonard J. Gustafson: Honourable senators, I give notice that on Thursday next, December 6, 2001, I will move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit on Tuesday, December 11 at 4:30 p.m., even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

VETERANS AFFAIRS SUBCOMMITTEE AUTHORIZED TO MEET
DURING SITTING OF THE SENATE

Hon. Michael A. Meighen: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Subcommittee on Veterans Affairs have power to sit at 5:45 p.m. today, even though the Senate may then be sitting, and that the rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Lorna Milne: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3:30 p.m. today, even though the Senate may then be sitting, for the purpose of receiving evidence from the Minister of Justice and Attorney General of Canada and her officials during its consideration of Bill C-15A, an Act to amend the Criminal Code and to amend other acts, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

INVIOABLE RIGHTS

NOTICE OF INQUIRY

Hon. Terry Stratton: Honourable senators, I give notice that on Monday next, December 10, 2001, I will call the attention of the Senate to the fact that even in times of crisis or emergency, certain values and rights are to remain inviolate.

QUESTION PERIOD

NATIONAL DEFENCE

AUDITOR GENERAL'S REPORT—FUNDING SHORTFALLS

Hon. J. Michael Forrestall: Honourable senators, in the face of the worst tongue-lashing any government has ever received from an Auditor General, it is beyond my comprehension that the Leader of the Government in the Senate would not expect me to ask a question.

Honourable senators, my question, of course, is for the minister. In 1998, the Auditor General told Parliament that the military was \$1 billion short per year over a five-year period. In 2000, the Conference of Defence Associations said that the Department of National Defence required an additional \$1 billion to meet its budget per year over at least the next five years. In 2001, the Level 1 business plans of the Department of National Defence, the plans of the service chiefs and ADM Materiel showed that the department was indeed \$1.3 billion short. Now we have the Auditor General stating in her 2001 report that the military is \$1.3 billion short of the monies it needs to do its job.

Will the government commit \$1.3 billion in the upcoming budget to the Canadian Forces' budget in new funds, and additional funds to pay for the campaign on terror?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Forrestall for his question and, of course, I expected him to ask one. I do not think I have sat here as the Leader of the Government in the Senate on a single day when he has not asked a question. I would be very disappointed if he did not ask one.

As to the commitment he is asking from me today, he knows full well that to make that kind of commitment today, when a budget is due to come down on Monday, would be breaking all the rules of cabinet solidarity as well as budget secrecy.

Senator Forrestall: Honourable senators, even more surprising than not getting a question from me would be for me to get an answer from the Honourable Leader of the Government. The question I am asking arises out of the Auditor General's report, not Monday's budget.

● (1400)

The Department of National Defence commits only 19 per cent of its budget to capital expenditure. It is required to spend approximately 23 per cent of its total budget on capital programs to avoid "rust out." The Auditor General's report states that the Aurora aircraft fleet, our only long-range strategic surveillance platform, flies only 42 per cent of the time, and the Sea King, our most used front-line aircraft, is only available to fly 29 per cent of the time.

Let me remind colleagues that of that 29 per cent of the time, 60 per cent of those missions conclude in failure to complete. Will the government commit in writing — as the Australian government did — to funding its 1994 White Paper on Defence by committing at least \$1.3 billion per year in new monies to the defence budget, year over year for the next five years and longer?

Senator Carstairs: Honourable senators, Senator Forrestall said in his preamble that he does not get answers. Of course he gets answers. It is just that he does not happen to like them, and for that I make no apologies. He always gets answers to his questions. He gets them here in the chamber and also in written form when I do not have the information available to me.

In terms of the response that the government must make to the Auditor General, the Minister of Defence welcomed the report. He indicated that it set positive targets for the defence community. The Auditor General indicated in her statement that the navy and army have maintained or increased their level of activity over the last five years. We also know that, in the last 10 years, DND has acquired new frigates for the navy, light armoured vehicles for the army, air force system upgrades, new computer equipment and uniforms, and search and rescue helicopters. Thus there have been ongoing purchase commitments on behalf of the Department of National Defence, and we will learn on Monday if there are to be additional commitments.

AUDITOR GENERAL'S REPORT—COMBAT CAPABILITY

Hon. J. Michael Forrestall: Honourable senators, I have a very serious question arising out of this most damning report by the Auditor General. The Minister of National Defence and the minister here in our chamber always assert that the Canadian Forces are more combat capable than they were 10 years ago. The Auditor General, an Officer of Parliament, says otherwise. Can the minister tell us why this servant of Parliament would so bluntly choose to cast doubt on the veracity of her colleagues' statements that ring hollow when the bulk of our aircraft — key to providing air support to our army and navy — cannot seem to get off the ground more than 30 or 40 per cent of the time?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Forrestall for a very serious question. It is a serious one. However, I would take issue on one aspect of it. I do not know whether he used the word in a way in which I would use it, but the whole point of the Auditor General is that she is not a colleague. She is an Officer of Parliament, separate and apart from the members of Parliament and the senators, and that is what gives her her sense of independence. I am sure that we totally agree on that particular definition.

Senator Forrestall: No, we do not — not at all.

Senator Carstairs: She should indeed be looking at this situation through her own lens as the Auditor General, and not through the governing party's lens nor through the opposition parties' lenses.

In terms of the statements about Canada being combat capable, that is determined by the Chief of the Defence Staff through his knowledge and expertise with respect to the troops under his command.

Hon. Gerry St. Germain: Honourable senators, on a supplementary question to the Leader of the Government in the Senate: I agree with her on the aspect of the Auditor General. However, in regard to the Chief of the Defence Staff, do you not think that his hands are tied in his ability to truly express his opinion on the situation? He accepts the position based on the status quo. Do you not think it is unfair to say that he is in agreement with regard to the state of his equipment? Having been a military officer and a pilot myself, I find it so ludicrous that the minister would try, in any way, shape or form, to defend something like these Sea King helicopters. It does not make sense to spend that much time servicing an aircraft.

I have an aircraft myself which was built in 1957. There is no way in the world that I would ever be able to afford to fly it if I had to service it for 30 hours for every hour of flight time. Is there no way — and I have asked this question before of the previous minister — in which we could go out and lease aircraft? There are thousands, if not millions, of aircraft in this world that can be leased, yet we continue to send our forces out with these antiquated, dilapidated pieces of equipment.

Senator Carstairs: Honourable senators, there are many parts to the honourable senator's question. The first is that I, for one, would not question the integrity of the chief of our Armed Forces under any circumstances. He is a man of great integrity. In his statements, he has been quite public that our armed services need additional equipment. He has put that on the record, and I respect his having done so. However, he has also said that our service is combat capable, and I also accept that judgment from him.

As to Senator St. Germain's specific question with respect to the leasing of aircraft, although the aircraft we have does require a great deal of maintenance — the honourable senator is quite correct about that — they are functioning. They are functioning very well in the war against terrorism, as we speak.

Senator St. Germain: Honourable senators, when the minister says "combat capable," what does that really mean from her perspective? That is quite a wide-open statement — combat capable for what?

Senator Carstairs: Combat capable for the assignments to which they are sent. We have performed extraordinarily well in places like Kosovo; we are performing extraordinarily well in the Gulf and in the other locations where we are presently located. That is combat capable.

Senator St. Germain: When we had to borrow batteries from the Spanish air force to keep our airplanes flying? Be serious, please.

Senator Carstairs: The honourable senator is, in fact, a pilot and he does own his own plane. He does not own a helicopter. Whether it is a Sea King, a Sikorsky or anything else, the helicopter needs more maintenance than any other aircraft. That is known about such aircraft. The reality is that no matter what we replace these planes with, they will always need intensive maintenance. That is the nature of the beast.

Senator Forrestall: On a brief supplementary, I could not let the opportunity go without reminding the Leader of the Government in the Senate that, indeed, the Sea King is a Sikorsky aircraft.

• (1410)

FINANCE

AUDITOR GENERAL'S REPORT—ONE-TIME GRANT TO RECIPIENTS OF GST CREDIT TO OFFSET HEATING COSTS—EFFECT ON BUDGET PROPOSAL TO AUGMENT GST CREDIT

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate. I have begun to read the Auditor General's report, and I have found some precious stones about the government's management of our national finances.

This past winter, the government provided a one-time grant for heating expenses to recipients of the GST credit. Just under 9 million Canadians received cheques totalling some \$1.54 billion to help with increased fuel costs. The Auditor General has found no shortage of problems with this payment, not the least of which was very poor targeting. Only \$250 million to \$350 million went to people who were actually experiencing immediate increases in heating costs — about one in five. About 40 per cent of those who got the cheque were either not low- or modest-income or were not about to experience an increase in fuel costs because they heated with electricity. About 600,000 Canadians who would have qualified based on their income in 2000 got nothing because the test for these January 2001 cheques was based on 1999 income or family status. As well, there was the problem of cheques being sent to 1,600 convicts, 7,500 dead people and 4,000 people who do not even live in Canada.

The department's response to the Auditor General is a defence of the way it issued the cheques, with no indication that it has learned anything from its mistake.

Honourable senators, in recent days, there have been reports that the Minister of Finance, faced with a \$13-billion surplus this year, may announce a one-time \$4-billion top-up of the GST credit in his budget. Can the government leader assure the Senate that the government has learned something from its experience with the heating credit and that any special GST top-up will reflect those lessons?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I think it is safe to say that the government always learns from the Auditor General's report. That is why we have the system of the Auditor General in place. Every single one of her recommendations is carefully studied and analyzed. One would hope that the lessons that she teaches governments are, in fact, learned.

Just to give a specific example, because the honourable senator used a very specific example, of the individuals who lived outside of the country and received benefits under this plan, the information that I have is that only \$2 million of the \$1.4 billion was spent in that way, but if we had spent the time to do the analysis and set up the computer programs to delete such people, the cost would have been \$50 million.

Senator LeBreton: And the election would have been over.

[Translation]

Senator Bolduc: Honourable senators, the minister mentioned a few thousand people who received cheques. However, that is not the issue; we are talking about nine million who received a rebate. That must be taken into account. That is the real issue.

[Senator Bolduc]

[English]

NATIONAL REVENUE

AUDITOR GENERAL'S REPORT— ONE-TIME GRANT TO RECIPIENTS OF GST CREDIT TO OFFSET HEATING COSTS— OVERSIGHT BY PARLIAMENT

Hon. Roch Bolduc: Honourable senators, my second question is also related to the heating grant, but it is about parliamentary oversight. Beyond the issue of who got the cheques, the Auditor General has raised serious concerns about the way this payment was approved. Parliament did not approve this payment. The government used a Governor General's Warrant, something that is supposed to be reserved for emergencies when Parliament is not sitting. The Auditor General noted that with Parliament set to be recalled at the end of January, waiting for legislation would have added no more than six weeks to the process. The payment did not meet the test of an emergency.

Even though the Auditor General found that most recipients were not facing immediate increases in heating costs, in its response to the Auditor General, the government offered no apology for bypassing Parliament. It wants us to believe that waiting six weeks for Parliament to pass legislation would have delayed the cheques by up to six months, until July, because Revenue Canada would have been too busy with other things.

Honourable senators, can the government leader assure the Senate that never again will \$1.4 billion be spent without proper authorization from Parliament?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest respect to the senator, I cannot assure him that political decisions will never be made by politicians in the future.

AUDITOR GENERAL'S REPORT—ONE-TIME GRANT TO RECIPIENTS OF GST CREDIT TO OFFSET HEATING COSTS

Hon. Edward M. Lawson: Honourable senators, I have a brief supplementary question on the issue of the 7,500 dead people who received cheques. I want to know how the government knew they were dead. Did the dead people communicate that fact, or did relatives? Second, were any of the cheques that were sent to the 7,500 dead people cashed? This is a serious question, because it is an invitation to commit fraud. Were any of those cheques cashed fraudulently?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my understanding is that they learned about the 7,500 dead people because the cheques were returned. I will, however, need to make further inquiries to determine whether some of them were cashed. If they were cashed, it certainly is a scam.

TREASURY BOARD

REPORT OF TASK FORCE ON REFORM OF PUBLIC SERVICE

Hon. Jean-Robert Gauthier: Honourable senators, my question is directed to the Leader of the Government in the Senate. I apologize for not giving notice of this question.

In her latest report, the Auditor General talks about the complex, rules-driven staffing system that has been an obstacle to recruiting qualified applicants into the public service for 40 years. She goes on to say, and the press reported on this yesterday, that 80 or 90 per cent of new appointments to the public service are done on short-term, part-time employment. That is to avoid the whole complex appointment system that is in place.

I asked the leader a few weeks ago if the report prepared by Randal Quail entitled "The Quail Task Force on Modernizing Human Resource Management" will be available soon. I understand Mr. Quail had until the end of November to table his report with the government. I remember Senator Murray asked whether it would be made public. I am asking the minister to inquire whether the report is available and when it will be made public.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for that question. The honourable senator asks a very important question because the staffing problem that has been identified by the Auditor General has also been identified by Treasury Board. It has become an increasingly complex system to hire, and that is exactly why the Quail report is expected soon. To my knowledge, it has not yet been received. As you know, that report will be received first by the President of the Treasury Board. I certainly have not yet seen it. As I committed earlier, as soon it can be made publicly available to members of the Senate, I will make it so available.

PARLIAMENT

AUDITOR GENERAL'S REPORT—OVERSIGHT OF GOVERNMENT PROGRAMS

Hon. Herbert O. Sparrow: Honourable senators, I have a question for the Leader of the Government in the Senate following on some of the other questions that have been asked. Who is minding the store in Ottawa? We as parliamentarians have tried to act as a guard against the mismanagement of funds by the government. We are appointed and elected to assist in the delivering of good government. I think that parliamentarians, in both this chamber and the House of Commons, are not being heard. The home heating oil incident is only one example,

although it is a crucial one, where Parliament was bypassed. We in this chamber, under questioning, in caucus, tried to bring forward the issue that there was terrible mismanagement when those cheques went out. We did it at an early stage, but we were ignored. With regard to Western Canada, we tried our best to bring forward the problem of the Agricultural Income Disaster Assistance Program payments. At a very early stage, we tried to explain how it was not working, that the forms were wrong, that the policies were wrong and so on.

• (1420)

Who was minding the store? No one. No one was taking this issue seriously. It is difficult for us as parliamentarians to go back and try to explain, because the fact that any department could be so inefficient is inexplicable.

We talk about gun control. We talk about the terrible problems that exist in gun control where people still do not have their permits to hunt. We know that the registration system has cost half a billion dollars more than it was suggested it would cost. That was brought to the attention of the government.

We are supposed to mind the store but, honourable senators, we are not listened to, whether it is in committees, in this chamber, in caucus or wherever, and then there is laughing when these problems are brought forward and say, "Oh, it is a funny sort of thing," and we turn to issues that are not important. We went through a terrible waste in relation to the Department of Human Resources Development, where close to \$1 billion, they say, is still not accounted for.

We have people in the agriculture industry in the West who are in serious trouble, but they are laughed at, and told that there is no money available to help them. We have child poverty that we are so worried about, but then we laugh about half a billion dollars being spent unwisely. Those funds went to people who did not need or deserve them, and our colleague across the aisle was talking in terms of 90,000 such people.

Why do we not have a system, either through this chamber, the Finance Committee or some other committee, by which we can look closely at these issues and recognize that such programs are being terribly mismanaged — and it is.

My question is: Who is minding the store?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Sparrow for his comment, and I obviously do not have the time today to go into all of the individual programs that he has raised. However, there is no question that he has raised serious concerns and some serious issues.

Who is minding the store? The Government of Canada is supposedly, officially, as elected by the people of Canada, to mind the store. For the most part I believe it does a first-class job. Are there individual anomalies within which governments make mistakes and for which governments must then be slapped on the hand by the Auditor General occasionally and told to correct those mistakes? Yes, of course. I have never known an Auditor General's report, in a province or at the federal government level, which did not do just that, no matter what the stripe of the government in any given day. That is their job. Their job is to identify all these problems and all these irregularities. But it is also our job. It is our job as senators, and it is also the job of members of the House of Commons.

I think we should accept what I understand will eventually be a recommendation coming forward from the Senate rules committee, which suggests that the Estimates of every single department should be referred to the Senate committee that reflects the basic activities of that department. I encourage senators to then give those Estimates the kind of scrutiny which sometimes, frankly, we have failed to do.

Senator Sparrow: Honourable senators, I appreciate the answer that the minister has given, but the Auditor General has a part to play, and I understand that. As members of Parliament, we are charged with the responsibility of delivering good government to the nation, and the government of the day represents the members of Parliament, in both houses, in jointly representing the people of this country. If the people who were elected and appointed to this parliament were allowed to do their jobs, we would not require an Auditor General.

Senator Carstairs: Honourable senators, I would disagree with that. I think we will always require an Auditor General because I do not think that it is within the human condition to always get every single thing right. That is why we have an Officer of Parliament called the Auditor General, and that is why I respectfully received her report yesterday, which I have read in part with great interest, and will continue to read over the weekend. It is in reading reports such as that that we challenge ourselves to be better members of the Senate, to be better members of the House of Commons and to be better members of cabinet.

Senator Sparrow: Honourable senators, how long has there been an Auditor General in Ottawa overseeing the spending of the government? What happened before we had an Auditor General?

Senator Carstairs: Honourable senators, my understanding is — and I must say that Senator Austin has been feeding me this information — that we have had an Auditor General since 1878.

[Senator Carstairs :]

[Translation]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in this chamber two delayed answers, one in response to a question raised by Senator Forrester on October 25, 2001, concerning the elimination of infantry battalions and a brigade, and one in response to a question raised by Senator Nolin on November 20, 2001, concerning the Newfoundland name change.

NATIONAL DEFENCE

ELIMINATION OF INFANTRY BATTALIONS AND A BRIGADE

(Response to question raised by Hon. J. Michael Forrester on October 25, 2001)

The Army is studying its organization with the purpose of modernizing the force structure to meet contemporary and future threats. The future of mortar platoons is one of many items under consideration. No final decision has been taken with regard to this restructuring process.

JUSTICE

CONSTITUTION AMENDMENT, 2001, NEWFOUNDLAND AND LABRADOR—EFFECT ON BORDER WITH QUEBEC

(Response to question raised by Hon. Pierre Claude Nolin on November 20, 2001)

Although the need to address security issues is a high priority for the Government of Canada, this cannot exclude all other work. The business of government must continue, including cooperation with provincial governments to improve the federation in a range of other policy areas.

The Newfoundland and Quebec governments were consulted in advance of the Government of Canada's decision to proceed with this amendment to the Constitution.

The Government of Canada has and will continue to be responsive to provincial requests for amendments to the Constitution aimed at making the federation work better.

Please find in annex copies of letters to Premier Landry and Premier Grimes, informing them of the amendment.

The Honourable Bernard Landry
Premier of Quebec
J Building, 3rd floor
885 Grande-Allée East
Quebec City, Quebec
G1A 1A2

Dear Premier:

On April 29, 1999 the Newfoundland House of Assembly unanimously adopted a resolution authorizing the Governor General of Canada to issue a proclamation amending the Constitution of Canada by changing the name of the Province of Newfoundland, where it occurs in the Terms of Union of Newfoundland with Canada set out in the Schedule to the *Newfoundland Act*, to "Newfoundland and Labrador".

The Government of Canada intends to introduce an identical resolution in Parliament shortly. If adopted by the House of Commons and Senate and proclaimed by the Governor General, the requirements for effecting a bilateral amendment to the Canadian Constitution that are set out in section 43 of the *Constitution Act, 1982* will be met.

As the Honourable Stéphane Dion pointed out in December 1999, the resolution adopted by the Newfoundland House of Assembly in 1999 and which is to be put before Parliament has nothing to do with borders. Thus, I would like to reiterate that the proposed amendment changing the name of Newfoundland will have no impact on the boundary that separates Quebec from Newfoundland.

Changing the name of the Province of Newfoundland to "Newfoundland and Labrador" in the Terms of Union is a symbolic but important recognition of Labrador's status as a full and vital partner within the province, with its own unique geography, history and culture. As a native of Newfoundland and Labrador, I will be proud to present this resolution to Parliament.

Please accept, Mr. Premier, my most sincere wishes.

Sincerely,
Brian Tobin

The Honourable Roger Grimes
Premier of Newfoundland and Labrador
Confederation Building, East Block
P.O. Box 8700
St. John's, Newfoundland
A1B 4J6

Dear Premier:

As you are aware, on April 29, 1999 the Newfoundland House of Assembly unanimously adopted a resolution authorizing the Governor General of Canada to issue a proclamation amending the Constitution of Canada by changing the name of the Province of Newfoundland, where it occurs in the Terms of Union of Newfoundland with

Canada set out in the Schedule to the *Newfoundland Act*, to "Newfoundland and Labrador".

I am pleased to inform you that the Government of Canada intends to introduce an identical resolution in Parliament shortly. If adopted by the House of Commons and Senate and proclaimed by the Governor General, the requirements for effecting a bilateral amendment to the Canadian Constitution that are set out in section 43 of the *Constitution Act, 1982* will be met.

As the Honourable Stéphane Dion pointed out in his letter to Minister Lush of June 11, 2001, the resolution adopted by the Newfoundland House of Assembly in 1999 and to be put before Parliament has nothing to do with borders. Thus, I would like to reiterate that the proposed amendment changing the name of Newfoundland will have no impact on the boundary with Quebec.

Changing the name of the Province of Newfoundland to "Newfoundland and Labrador" in the Terms of Union is a symbolic but important recognition of Labrador's status as a full and vital partner in our province, with its own unique geography, history and culture. As a proud son of Newfoundland and Labrador, I look forward to leading this resolution through Parliament.

Sincerely,

Brian Tobin

[Earlier]

[English]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw your attention to the presence in our gallery of members of the study mission to Canada by chairpersons and secretaries of selected committees of the House of People's Representative Parliament of the Federal Democratic Republic of Ethiopia.

On behalf of all senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

LESSONS TO BE DRAWN FROM TRAGEDY OF TERRORIST ATTACKS IN UNITED STATES ON SEPTEMBER 11, 2001

NOTICE OF INQUIRY

Leave having been given to revert to Notices of Inquiries:

Hon. Pierre De Bané: Honourable senators, I give notice that on Wednesday next, December 12, 2001, I will call the attention of the Senate to certain lessons to be drawn from the tragedy that occurred on September 11, 2001.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to proceed in the following order for Government Business. We would like to begin with Item No. 2 on the Orders of the Day, third reading of Bill C-24, followed by Item No. 1, Bill C-31, finishing up with Item No. 3 and all other items in the Notice Paper in their respective order.

[English]

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Wilfred P. Moore moved third reading of Bill C-24, to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other acts.

He said: Honourable senators, I am pleased to open debate at third reading of Bill C-24, to amend the Criminal Code in relation to organized crime and law enforcement and to make consequential amendments to other acts.

Over the last few months, there has been a considerable amount of debate in this chamber, in the other place and generally within Canada, about the need to enhance law enforcement tools to respond to threatening criminal activity, particularly terrorism. This debate continues as Bill C-36 receives consideration by a special committee of the Senate. While many of us have been quite naturally focused on that vital issue, we must remember that addressing the problem of organized crime is also vital to protecting public safety in Canada.

Organized crime continues to have a substantial negative impact on our communities and on our country as a whole. Drug trafficking, people smuggling, illegal trafficking in firearms, smuggling of contraband tobacco and organized prostitution, money laundering and credit card fraud are just some of the criminal activities directly associated with organized crime in this country.

We are all paying a price for these activities. In fact, in certain areas of the country, organized criminal activity, which includes threats and violence, has created an atmosphere of fear. These threats and violence have not just targeted other gang members but have killed, injured or threatened innocent members of the general public.

While we did have certain specific laws in place to deal with organized crime, in particular the measures of Bill C-95, enacted in 1997, law enforcement and prosecution authorities have told us that there is a critical need to strengthen these measures in order to deal adequately with the threat now posed by organized crime.

• (1430)

Honourable senators, Bill C-24 takes up this important challenge. It does so through initiatives in four main categories. First, the bill creates new criminal organization offences that comprehensively target the full range of activities undertaken by or for criminal organizations. Second, the bill includes measures to improve the protection from intimidation of people who play a role in the justice system, which is essential for the effective functioning of our criminal justice system. Third, the bill creates an accountability process to provide limited protection to law enforcement officers from criminal liability for certain otherwise illegal acts committed in the course of investigations. Fourth, the bill broadens the scope of the powers of law enforcement to seize and forfeit the proceeds of crime and property that was used in a crime.

Honourable senators, Bill C-24 received second reading in this chamber in September and was referred to the Standing Senate Committee on Legal and Constitutional Affairs. The bill has now been reported. The Legal and Constitutional Affairs Committee has recognized that the law enforcement tools in the four categories I have mentioned need to be strengthened. If we expect our law enforcement officers and our criminal law system to be able to address the evolving face of organized crime, then clearly we must give them adequate tools to do the job.

At the same time, I must note that reservations have been expressed by honourable senators on the committee about certain aspects of Bill C-24. Many of these reservations have focused on the law enforcement justification provided by new sections 25.1 to 25.4 under the bill. This issue received considerable attention from the standing committee. Under these proposed sections of the Criminal Code, designated law enforcement officers would be justified, in certain circumstances, in doing an act or omitting to do an act that would otherwise constitute an offence. Officers, however, must be specially designated for the purposes of the scheme by a "competent authority," which in all cases is the responsible minister. In emergency circumstances, a temporary designation may also be made by a senior law enforcement official.

As a central condition of the scheme, a designated officer must believe, on reasonable grounds, that committing the act, or omitting to do so, is reasonable and proportional in the circumstances, having regard in particular to the nature of the act or omission, to the nature of the law enforcement duty or function being carried out, and to the availability of other means for carrying out that duty or function.

The committee heard strong testimony from law enforcement officials and others that demonstrated that these tools are necessary to respond to the Supreme Court of Canada decision in *Regina v. Campbell and Shirose*. In that decision, the Supreme Court ruled that police have no inherent immunity for conduct that would constitute an offence, even where it is undertaken in good faith for the purpose of an investigation. It also indicated that it was for Parliament to decide to provide for any such immunity.

Since the Supreme Court's judgment, in the absence of sufficient immunity under Canadian law, certain long-accepted law enforcement techniques have been called into question and numerous undercover investigations have been stopped or significantly hindered. Undercover police work in particular, which is critical to dealing with organized crime, has been seriously disrupted or stopped altogether in some cases.

On the other hand, the committee also heard from a number of witnesses, including the Canadian Bar Association and the Barreau du Québec, who expressed concerns about these provisions. There were concerns that expressly allowing law enforcement officers to engage in conduct that would otherwise constitute offences could undermine the rule of law in Canada. There were also concerns about the degree of law enforcement accountability and whether there would be sufficient control and oversight on law enforcement officers in respect of their use of these powers.

In response to these concerns, the committee heard evidence concerning the control and accountability mechanisms that would apply to the legislated justification under Bill C-24. These include: the requirement for designation by an accountable minister; the complete exclusion of crimes of violence that cause death or bodily harm, sexual offences and obstruction of justice; the requirement for an authorization from a senior official for acts involving substantial property damage or the use of agents; and the "reasonable and proportional" test that applies in all cases under the regime.

The accountability mechanisms also include a requirement for a public annual report and notification to persons whose property is lost or seriously damaged. There will also be a full parliamentary review of the law enforcement justification provisions within three years of coming into force, and a committee of the Senate and of the other place can conduct independent reviews.

It is important to observe that the control and the accountability mechanisms that are now reflected in the bill were constructed after considerable public input about the law enforcement justification. This input was facilitated by the tabling of the White Paper on Law Enforcement and Criminal Liability for public comment in the spring of 2000. That white paper was tabled in this chamber in June 2000. The input led the

government to make changes that, above all, were aimed at improving control and accountability. The law enforcement justification regime is therefore a matter that has been the subject of considerable informed debate and commentary, and that debate led to a number of significant enhancements of both the control and accountability mechanisms in the scheme.

Throughout the committee process, two specific issues garnered considerable attention from both the members of the committee and those who appeared before us. Serious concerns were expressed about insufficient public accountability for police officers operating under these provisions, as mentioned above, and equally important, fear that public accountability would be diluted in proposed section 25.1(3) of the bill. The latter section allows the designation of a broad group of public officers for exemption from criminal liability as opposed to a single named individual. I believe we can all see the potential danger with the wording of this section as it now stands and the need to provide a solid web of civilian oversight.

Included in this framework of accountability is Parliament itself, which has a special responsibility within three years to review this scheme. It is important that this review be undertaken with care and thoroughness. In relation to this, it is incumbent on federal and provincial governments and law enforcement services in all Canadian jurisdictions to collect and keep appropriate information on the use of this power in order to be able to fully inform the parliamentary review. Honourable senators on the committee spoke of the need for the Senate in particular to undertake a vigorous review of the scheme.

There was much evidence before the committee concerning the overall police oversight mechanisms that are currently in place at the federal and provincial levels. The significant work of these bodies — such as the Commission of Public Complaints into the RCMP and similar review bodies for provincial and municipal police services across the country — fulfils a needed role in providing an independent review of citizens' complaints of improper law enforcement conduct and of the oversight of law enforcement in general. The government is confident that these existing civilian oversight mechanisms will be able to provide the checks needed on the law enforcement justification regime in Bill C-24.

These oversight bodies have confirmed that they will pay close attention to these new powers. The committee heard that the Canadian Association for Civilian Oversight on Law Enforcement, or CACOLE, the umbrella organization of all of these bodies, plans to ensure that its members are fully informed of the responsibilities in regard to police conduct relating to both Bill C-24 and Bill C-36. In this regard I understand that the Department of Justice and the RCMP plan to sponsor a national meeting of all civilian oversight agencies to discuss these very issues.

• (1440)

On the issue of law enforcement justification in Bill C-24, Professor Louise Viau, a law professor at the University of Montreal, provided persuasive testimony. She spoke strongly of the balances she felt have been achieved under the scheme in the bill, about the control and accountability mechanisms to which it would be subject, and about the effectiveness of the existing oversight bodies. This testimony was particularly compelling because professor Viau was one of the commissioners on the recent public commission appointed to inquire into the conduct of the Sûreté du Québec, the Quebec provincial police force, known as the Poitras commission, which has been mentioned in this chamber.

Professor Viau also spoke from her experience of inquiring into allegations of police misconduct, and the mechanisms that were developed to respond to those allegations in her province, and urged us to respect the jurisdiction and responsibility of the provinces to establish such mechanisms, and the roles and responsibilities of civilian oversight bodies that have been established across Canada. She urged that we give our weight to strengthen these bodies where necessary.

At the end of the deliberations, honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs clearly accepted the need for the law enforcement justification provisions, and control and accountability mechanisms. The committee also clearly accepted the need for the advisability of the other measures in Bill C-24.

At the same time, the report does include observations by the committee members that relate especially to their concerns about law enforcement justification. There is clearly support for the provisions, but not entirely without reservation. In order to meet the concerns expressed by the committee, the government has come forward with two amendments. The first is to limit the broad scope of the wording in section 25.1(3) of the bill. The second is to ensure adequate oversight of these new provisions. The government has listened to the committee and has agreed to amend the bill.

MOTION IN AMENDMENT

Hon. Wilfred P. Moore: Therefore, honourable senators, I move, seconded by Senator Joyal:

That Bill C-24 be not now read a third time but that it be amended in clause 2,

(a) on page 4, by replacing line 32 with the following:

“public officers”;

(b) on page 5 by replacing line 5 with the following:

“public officer in”;

[Senator Moore]

(c) on page 6 by replacing lines 5 and 6 with the following:

“(b) is designated under subsection”; and

(d) on page 4 by adding after line 34, the following:

“(3.1) A competent authority referred to in paragraph (a) or (b) of the definition of that term in subsection (1) may not designate any public officer under subsection (3) unless there is a public authority composed of persons who are not peace officers that may review the public officer’s conduct.

(3.2) The Governor in Council or the lieutenant governor in council of a province, as the case may be, may designate a person or body as a public authority for the purposes of subsection (3.1), and that designation is conclusive evidence that the person or body is a public authority described in that subsection.”

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Hon. Pierre Claude Nolin: Honourable senators, I have a few questions for my colleague Senator Moore, if he wishes to entertain them.

The Hon. the Speaker: Will the Honourable Senator Moore accept questions?

Senator Moore: Of course, honourable senators.

Senator Nolin: Would the new civilian oversight measure be undertaken prior to the appointment of specific individuals in the police force? Is that how it would work?

Senator Moore: Honourable senators, I did not hear the first part of the question.

Senator Nolin: I understand the first amendment would eliminate the appointment of groups of police officers. They will now be individually appointed. That is a very good improvement.

My second question has to do with civilian oversight. Is this oversight prior to the appointment only, or while they are performing their new responsibilities?

Senator Moore: I understand that it is throughout the whole process.

Senator Nolin: Will the term “civilian oversight” be applied with regard to police officers?

Senator Moore: Yes.

Senator Nolin: That means that it will be under the competent authority, which could be the federal Minister of Justice or the provincial minister.

Senator Moore: Yes.

Senator Nolin: Or would there be a civilian body that would advise the minister before and monitor —

Senator Moore: The ongoing designations.

Senator Nolin: That is definitely better than what was in the bill.

Hon. A. Raynell Andreychuk: Honourable senators, I seek some clarification. This is the first time we have seen these amendments. We expressed many concerns in the committee. I was not aware that these amendments were coming forward.

What is the second amendment? I do not follow. I now understand the first amendment. The honourable senator referred to various lines and deletions. We just received the amendments on my desk about 30 seconds ago.

As to the second amendment, can the honourable senator tell me what the full force and effect of it will be?

Senator Moore: Honourable senators, the second amendment is the inclusion of a new section. The others were changes, but this is an insertion of new provisions to provide for civilian oversight which was, as the honourable senator knows, one of the main concerns of our committee's work, as well as the designation of a public authority to provide that oversight. In the words of Senator Grafstein, there is conclusive evidence these things were required. I realize that honourable senators have just received the amendments. I can tell honourable senators that the Leader of the Government in the Senate has been working diligently in responding to the concerns we relayed to her as this process has been ongoing. She has achieved a great deal, not just for the committee but, indeed, for the country.

Senator Andreychuk: What the honourable senator is now saying is that there will be new civilian oversights created in each province, as I understand it, as opposed to a national authority. Will these civilian oversights be global in scope as far as the act is concerned, or will they only apply to this very unusual power that we are giving them to go into areas of law enforcement that would otherwise be deemed to be against the Criminal Code?

• (1450)

Senator Moore: As I understand it, this applies to the authority that we are giving to the officers. It is not just a designation; we are giving them extraordinary powers, and this authority would give them the competency to oversee those activities.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, unless Senator Andreychuk has another question, perhaps I can explain, since I understand what this will

do. She asked in her first question whether these would be new bodies. The answer is: not necessarily. They could be bodies that are already established in the provinces which, in fact, already examine police activities. Every province has one of those bodies, with the exception of Prince Edward Island. The RCMP looks after Prince Edward Island in all regions outside of the small city of Charlottetown, and the RCMP also has its complaints commissioner.

This particular amendment alerts these bodies that already exist to the fact that they will be asked to provide a civilian oversight. This is to ensure that these new powers, which are very extensive, will be provided with that civilian oversight. In other words, it is really a signal to them in the legislation that we want them to be aware of the fact that these are new powers, and that these new powers should be examined carefully by these bodies.

The Hon. the Speaker: Is the house ready for the question?

Senator Nolin: No, I want to go through the amendments.

Senator Andreychuk: I would like to speak to the bill, but it would be preferable if I could also address the amendments so that I do not have to speak twice. I would just like to make a statement.

The Hon. the Speaker: Very well.

Senator Andreychuk: Honourable senators, I thank Senator Moore and Senator Carstairs for bringing forward some amendments to Bill C-24. As you know, the Standing Senate Committee on Legal and Constitutional Affairs has been struggling with many bills that are not what I could call of a routine nature, including variations to the criminal law that have to be addressed. In the Legal and Constitutional Affairs Committee we have received many bills that have far-reaching implications for Canadians and for the criminal justice system.

Bill C-24 was introduced as the result of a need to address what police officers and segments of Canadian society were concerned about, and that is organized crime and gangs that have grown up across Canada with tremendous resources, tremendous technology and tremendous initiative to move across this country. We heard witnesses say that in the time that police were beginning to alert the population about the crime problem envisioned through gang activity, there were provinces that did not have this activity. However, before the police could gear up and alert their political masters to the problems, along came the gangs in virtually every province across Canada. They tend to bring with them all kinds of horrific violence and disrespect in every form, including economic and criminal activity in the communities. Consequently, there is no doubt that the activity of gangs, gang violence and gang activity is detrimental to good governance and to the security of citizens.

The bill was absolutely necessary. I recall the first time we had an anti-gang piece of legislation here. It was cobbled together rather quickly at the initiative of the House of Commons. The government responded and the legislation came through this house. I remember stating at that time that it was important that the government do it properly and not do it quickly in anticipation of the public reaction to a particular incident. I am afraid that the government only heard half the message because, while there was some activity, it really took the prodding and activity of the police, and certain other activity, most notably in Quebec, to bring forward this initiative in the shape of Bill C-24.

However, this bill still does not deal with the kinds of activity about which I have been concerned, and that is the activity that has to do with gangs when they are youths, or children. A criminal response is not the appropriate response for that kind of gang activity. I see very little in the government policy and legislation that addresses gangs of youths. That will be, again as I have signalled, a growing problem. We have seen this problem manifest itself in Aboriginal communities, in non-Aboriginal communities and in new communities of Canada. Youths in a state of flux because of difficulties in their communities often come together. They do not come together in a positive way, but in a negative way. The alerts that we should watch for, such as gangs forming, are symptomatic of social problems in the community, but not strictly criminal activity.

I would urge the government to deal with that as a social issue, a complex Aboriginal issue, a complex child-care issue, and as requiring complex, federal-provincial negotiation for more resources in social services. I would urge the government not to ignore it.

My other concern, which I raised very strongly at the committee when we were discussing the bill clause-by-clause, is that, on the face of it, this bill is giving powers to the police so that they will be able to be designated and, in layman's terms, be able to break the law. If they break the law, that evidence can be used in court and the police officer will be granted immunity, in essence.

We have prided ourselves in Canada that we have curtailed police action to within the law. I have heard countless politicians, including those who are in authority today, say that what marks Canada out is that we are a country of the rule of law and that no Prime Minister, no cabinet minister, no civil servant, no parliamentarian, no police officer, is above the law. Consciously, throughout the decades, we have looked for means whereby we can give police tools within the law.

This will be a dramatic variation where the police can go in and investigate. We must bear in mind that while they are investigating anti-gang activity, which we want them to do, there is a great fear in the community of the exercise of this power far out-reaching the anti-gang concept. If we give police the discretion, they will use it. In my opinion, in most cases they will

exercise it in good faith. However, the definition of what is "good faith" and the exercise of it will rest with the whole police force and with those who work with and around police forces. There is a great threat to the administration of justice if these discretions are stretched, if the exercise of even "good faith" is stretched so often and so innovatively that we find the reach of the police stretching way beyond what we have known in the past.

Therefore, I am concerned that we are embarking on something unique and counter to what I think has been the practice, and that marked out Canadian police enforcement. We were told by one of the officials that Canada has a reputation of having one of the finest, if not the finest, police force in the world. I happen to think that is true. However, that has been in the context that the police have always acted within the law. Witnesses who appeared before us expressed concern about police discretion used against minorities and disadvantaged groups. This discretion can in fact be very dangerous. I am pleased that we are trying to curtail the discretion, but my concern has not been alleviated.

• (1500)

Civilian oversight is necessary, and I am pleased that there is some movement toward such provision. We have had civilian oversight of the police, but it has been mainly in the administration of their budgets. I have been part of such bodies that have been preoccupied with union issues and ordinary policing issues. This is an extraordinary power, so the amendment gives an important signal.

Nonetheless, I am still concerned about the of the civilian oversight bodies. Will they have the necessary competence and skills and will the police be able to share the required information? I am concerned that the information that will be shared with civilian oversight bodies will be numerical and statistical, not the type of information that will allow the civilian oversight bodies to truly understand what is happening. The Security Intelligence Review Committee oversees the Canadian Security Intelligence Service. SIRC has often reported their difficulty in getting full information on CSIS investigations. Their job is a very difficult but necessary one. Although there is a review mechanism, I wonder whether the powers given by this bill are necessary. As I have said, if you give tools, they will be used.

Finally, we are being inundated with new legislation as a result of the events of September 11 and as a result of new global criminal activity. We are assured that there are sufficient safeguards in place, that the powers being proposed in these bills are necessary and that the powers are proportionate to the other issues of which we must take account, such as civilian rights, individual freedoms, et cetera. We are also told, of course, that the powers are Charter proof and that, therefore, we should pass the legislation.

I remain worried that our concerns are being addressed on a piecemeal basis. I am very concerned about the cumulative effect on our criminal law, on human rights in Canada, and on Canadian values of the measures dealing with criminal law in Bill C-36, Bill C-24, Bill C-42 and Bill C-44.

It is time that there be some mechanism, be it in the Senate, in the House of Commons or jointly, to address the continual reduction of the safeguards and protections we have built up in our system in order that police power does not become arbitrary and government ability to use police cannot become dictatorial. There is a fine balance between the need for security and the need for the individual freedoms that make this country different from other countries.

Although, as Senator Carstairs has signalled, there is grave concern about maintaining what we consider to be the fabric of Canada, we must be very careful in the process. We have built this country with these balances and we should not continually respond to problems in our society with legal answers. Above all, we must ensure that we implement the measures that are the least intrusive into our human rights and fundamental values.

I grudgingly agreed to this legislation, even without the amendments. Therefore, I am pleased that there has been this response. I thank the Leader of the Government in the Senate for working with Senator Moore to bring them forward. However, my concerns remain. This is a good step, but the government has a long way to go to reassure Canadians. The time is coming when we must stop and reflect.

I will speak at another time about how the government could create this balance between security and human rights.

[Translation]

Senator Nolin: Honourable senators, I realize that if the Senate adopts these amendments, we will have to send them to the other place, which will also be able to examine and approve them.

I took a quick look at these amendments. I am very pleased to see that the committee's concerns were addressed. They were identified and included in the observations attached to the committee's report. I thank the Leader of the Government in the Senate for diligently convincing her colleague the Minister of Justice to amend the bill.

I draw the attention of senators to the fact that, within a three-year period, the Senate will have to establish a joint or Senate committee to review this bill. We have that authority. We will be able to broaden the mandate of that committee. The act authorizes us to examine clause 2, not the whole bill. I want this to be clear in every honourable senator's mind. Based on the bill alone, within the next three years, we will review only the new sections 25.1 and the ones that follow.

None of the clauses on the new repressive measures to fight organized crime are included in that review. I want senators to be fully aware of what they are approving.

Within the next three years, it will be possible for the Senate to broaden its mandate, and I hope that it will. This means that the Senate will be able to review not only Bill C-24, but all the measures that we support to ensure that our system to monitor criminal activity is much more effective. I wish to draw your attention to the fact that the review provided for is very restrictive. We will have to be vigilant in broadening the power of the committee that will examine this issue, to ensure that all aspects of the reforms on which we will be asked to make decisions are taken into consideration.

[English]

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Hon. Senators: Agreed.

Motion in amendment agreed to.

The Hon. the Speaker: Is the house ready for the question on Bill C-24?

Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Wiebe, that Bill C-24, as amended, be read a third time now.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill, as amended, read third time and passed.

● (1510)

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other Acts.

Hon. David Tkachuk: Honourable senators, my short speech today follows somewhat on the question Senator Sparrow directed earlier this day to the Leader of the Government about who is minding the store. As you know, I have talked on a number of occasions about the accountability of Parliament, and frankly, honourable senators, Parliament is supposed to be minding the store.

Both Senator Sparrow and I have a healthy distrust of the bureaucracy, not because the bureaucracy has bad people in it, but because bureaucracy is a large institution and we delegate powers to the bureaucracy. However, in delegating powers we should not delegate responsibility or accountability.

When was the last time a minister resigned because he misinformed Parliament? It does not happen any more. It does not happen because people no longer feel accountable. It is a little thing. People say, "It does not really matter, I changed my mind." We here in the Senate have an even more onerous responsibility. We are placed here with certain privileges. We do not have to seek the will of the people every four years like the members of the other place. As senators we have a responsibility to not only be the house of sober second thought, as many say, but an obligation to step in when we see failings in the works of the other place. If we are not fulfilling that obligation, I have no idea why we are here. Are we simply a mirror image of the other place, which is frankly what we have become. Perhaps if I were on your side I would feel differently, but I am not. I know that if there was a mirror there and we were looking at it, we would not see anything different from the other place.

Honourable senators, we are a privileged group. We receive our paycheques. We sit fewer days. We do not have to seek the will of the people. There is a reason for that: We can act with some independence when we see failings. To be the house of last resort, to uphold the Constitution and to uphold the reason for Parliament is accountability itself. If Parliament is not accountable then there is no accountability.

Yesterday an amendment was moved on Bill C-31, which was defeated. My remarks will focus on the process because Senator Oliver spoke on some of the problems we had with the bill, and Senator Angus, who will be speaking after me, will focus on other specific concerns. It was a small amendment that would have changed a couple of words so that the Crown corporation in question would be more responsible to Parliament and fall under the provisions of the Statutory Instruments Act. It was not a big deal. It was not a motion of non-confidence.

I do not know whether Senator Sparrow voted for that amendment, but that is a little thing we can do to fix the problem of who is minding the store. We could force Crown agencies to be responsible to Parliament, because if they are not responsible to Parliament they are only responsible to one man, and that is the minister who holds their portfolio. They do not have meetings. Can you imagine all that cash, all those employees and no one responsible? There is no annual shareholders' meeting when thousands of people get together and say, "Hey, what are you doing out there?" It is just them and us.

The bill was referred to the Banking Committee Tuesday evening two weeks ago, which began its study on Wednesday. On Thursday, we completed the clause-by-clause study. The

committee reported on Tuesday of last week with observations as an appendix to the committee report. They were minority observations because our colleagues on the other side refused to consider even two little amendments, which were both issues of accountability and not issues of principle or issues of great substance. That is all it was.

When the Banking Committee reviewed the EDC Act in March 2000, we expected legislation to be tabled once the overall review was complete. Bill C-31 is the first legislation to be tabled regarding the EDC since that review. We were expecting a name change and some minor changes regarding the pension plan. We were also expecting from the government a provision that would guarantee a level playing field while not compromising EDC's ability to serve exporters, sometime within six months of the issuance of the Senate Banking Committee's report, which was dated March 2000. That did not occur, nor did provisions for this new policy appear in Bill C-31.

While we continued to support the excellent work and initiatives of the EDC, we did have any outstanding concerns arising from this bill. My concerns, as I said earlier, deal with accountability. We have continued to witness an erosion of direct accountability by Parliament through the use of more detail in regulations. We have all heard the statement, "Oh, we will deal with that in regulations." Such detail does not even appear in legislation so we do not know what will happen. Then we are told, "Well, it will come up for review." Yes, it does, in the summertime. There are hundreds of them and it is very difficult to watch them all: changes to reporting techniques; relying on the Auditor General rather than the public accounts committee, which we used to rely on; reviews that are taking place further and further apart; and finally, less direct response to committees by the minister responsible.

Honourable senators, we should not deal with any bill unless the minister appears before the committee. If it were my government, I would say, "If you want this bill come before us and argue for the bill." We should not need to beg or ask. It should be a done deal or the bill does not move off the Order Paper. They are the ones who want the bill. They initiate the bill. Then they send their bureaucrats to argue for the bill in front of parliamentarians. That is ridiculous. We demean this place when we allow that to happen.

When the Standing Senate Committee on Banking, Trade and Commerce undertook its review of the EDC Act, our recommendations and report struck a balance between the Canadian government's commitment and obligation to the environment, which is the other issue that came up here, and the commercial objectives of this agent of the Crown, the Export Development Corporation. We decided and agreed it would be acceptable for EDC to establish its own environmental review framework.

Honourable senators, I had much difficulty with that. I believe the committee agreed to the process because we were assured there would be accountability built into this framework. In Bill C-31, which amends the EDC Act, an environmental review framework is established as anticipated. However, there must be further accountability to Canadians through Parliament, which can be achieved easily with an amendment ensuring that the Export Development Act is subject to the Statutory Instruments Act.

Senator Oliver moved that very amendment and it was defeated last night. Senator Nolin spoke eloquently a week ago Wednesday on Bill C-7, about the role of the Senate when it comes to legislation. If I have one strong message today, it is that we must ensure that Canadians, through Parliament, and especially through this chamber, have an accountability structure in which they can believe.

• (1520)

We should have a framework by which to judge bills. One requirement should be that the minister appear. We should also be able to tell how others are accountable to Parliament for the measures in the bill. How do we, as parliamentarians, impose our will upon what is happening to us? If there is no way to impose our will down the road, then this bill drifts off into never-never land; the actors are never made accountable to Parliament. The only way we can get the actors to be accountable to Parliament is through the public purse. However, we have left that oversight to others; we have not taken it upon ourselves. It rests with us, and we must be vigilant in our duty. I hope honourable senators will consider very carefully our duty and our role as senators in this place when we vote on third reading of this bill.

Hon. W. David Angus: Honourable senators, I, too, would like to join in the third-reading debate on Bill C-31.

I simply state at the outset that I do support Bill C-31, for the most part. I approve of and support the very good work done by the Export Development Corporation and its officials as they endeavour to achieve the aims and objectives set forth in their mandate.

However, there are several aspects of this bill that concern me deeply and which I think should concern us all. Senators Oliver and Tkachuk have already pointed out several flaws in Bill C-31, dealing especially with the lack of transparency and accountability which this proposed law accords to Canada's Export Development Corporation.

Senator Oliver's proposed amendments were defeated here last night without debate. The five Progressive Conservative senators on the Banking Committee prepared and submitted a minority report, honourable senators, which was appended to the committee's report filed here on November 27. That minority report was prepared only after the amendments put forward by those same five Progressive Conservative members on the

committee were dismissed out of hand without consideration, without any debate whatsoever. The amendments were rejected along party lines by the seven Liberal senators on the committee.

Honourable senators, before going into the details of my particular submission on one aspect of the bill, I refer you all to an editorial by Andrew Coyne entitled, "The death of Parliament," which appeared on November 28 in the *National Post*. He makes the point that Parliament — and that includes us, honourable senators — has abdicated its duty to be accountable, to debate and study legislation, to propose amendments and, when appropriate, to adopt them. Closure and party-line voting, without study or debate, were highlighted in this article and characterized as extremely objectionable. I quote one piece from that editorial:

If ever there were a time in which the legislature ought to play a leading role in the making of law — to air concerns, suggest improvements, and shape a consensus — it is now. And if ever there were any doubt that Parliament has ceased to play that role, there is no more. As a watchdog on the executive, as a guardian of the public purse, as a house of deliberation, it is, as the constitutional scholars say, a dead letter.

Honourable senators, we should pause to reflect on those points. We may not agree wholly with them but, as my colleague the Honourable Senator Tkachuk has just stated, it is a matter for serious concern at this particular time as we approach the Christmas break.

I refer honourable senators particularly to the section of the minority report dealing with clause 12. That is the clause that particularly concerns me. Clause 12 proposes to add a new section, 24.2, to the Export Development Act which would read as follows:

24.2 (1) Except with the written consent of the Corporation, no person shall in any prospectus or advertisement, or for any other business purpose, use the following names and initials: "Export Development Canada", "Exportation et développement Canada", "Export Development Corporation", "Société pour l'expansion des exportations", "E.D.C.", "EDC", "S.E.E." and "SEE".

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months, or to both.

In the face of this kind of proposed legislation, what is the rush? Why is the government wanting to push this bill through when we could be addressing such things in two small amendments? Honourable senators, I am sure, can see our concerns, and those of the witnesses who appeared before the committee.

[Translation]

According to government and EDC witnesses, the government's interest in clause 12 of the bill is to prevent all fraudulent acts. However, this clause is too broad and has the effect of criminalizing the use of the EDC's name or acronym without the explicit authorization of the EDC.

[English]

The problem appears not to be with the intent, honourable senators, but with the very wording of the proposed legislation. Simply put, the bill is very badly drafted and could easily lead to unwanted, unfortunate and difficult results, if not amended.

[Translation]

Under clause 24(2) of the bill, an organization with the same name or initials could be subject to criminal charges. I cannot overemphasize my concerns regarding the terrible consequences this clause could have on many Canadian organizations and companies.

[English]

Just taking a look through the phone book, for example, we found listings such as EDC Facilities Management & Consulting of Windsor, Ontario, Electronics Delivery Consulting of Toronto, and the EDC Telecommunications Group of Toronto. Does it make any sense to put firms like this at risk of heavy fines, and even possibly jail terms for their officers, for just using their own names and initials?

Adequate legal safeguards already exist to protect company names and trademarks under a variety of intellectual property laws and regulations already on the books. This proposed section 24.2 covers matters that are covered under well-established Canadian laws including trademark law, competition law and copyright laws.

Honourable senators, as drafted, Bill C-31 would make it a criminal offence to use the name EDC in an advertisement criticizing its record on the environment, unless you first get their written permission.

I am concerned with the fact that EDC requires this added protection. Why is that? As a lawyer, to me, this added security measure makes me wonder what is up. What have they got to hide? Why would the EDC require this special clause? I asked at the committee if they really needed it and they said no. I then asked if we should take it out and they said, "Leave it in," and they had seven willing horses to support them.

Why would EDC desperately need measures to guarantee that no organization could comment on EDC or even mention its name without its written consent or otherwise face a criminal violation? Is this not a violation of our freedom of speech? Testimony by witnesses has drawn the attention of committee

[Senator Angus]

members to the fact that the EDC has already written a letter directing a particular organization in Canada to stop using their initials on a Web site that is actively critical of the EDC's environmental record. Here is a huge government organization in a great big building here in Ottawa with thousands of employees, big enough to defend itself, but now it wants to write a measure into the law guaranteeing that no organization can even mention its name.

[Translation]

Honourable senators, we believe that interest groups and the media have the right to criticize and comment on Crown corporations that are funded by public monies if they want to.

[English]

• (1530)

Honourable senators, it is interesting to note that Bill C-41, which is currently before Parliament, does not include such a clause limiting the use of the initials CCC for the Canadian Commercial Corporation. The only other example that the government can list of a Crown corporation with such a clause is the Business Development Bank, the favourite bank of the Prime Minister. I would suggest that this really ought to be changed as well.

We have also been told of similar sections in the Bank Act and in the Insurance Companies Act. The sections may have a similar intent, but they are not drafted in such a draconian manner.

At committee a week ago Thursday, the government was quick to circulate the relevant sections of the Bank Act and the Insurance Companies Act as proof that this measure is not out of line. However, those acts prevent the use of a bank or an insurance company's name in a prospectus, offering, memorandum, advertisement for a securities transaction, and so on, except as permitted by the applicable regulations. Leaving aside the issue that the ban is on securities advertisements and not advocacy advertising or comparative advertising, the government side did not circulate the full story: We need to refer to the regulations which show us what is, in fact, permitted.

Let me say this: The Bank Act's "name use" regulations read as follows:

A person may use the name of a bank in a prospectus, offering, memorandum, takeover bid circular, advertisement, or a transaction related to securities, or in any other document in connection with a transaction related to securities where the use is required by law, or the bank has given its express written permission for the use.

Note, honourable senators, the one key difference: The Bank Act regulations do not require you to get the permission of a bank if you are required by law to mention the bank's name in a securities prospectus. Regulations under the Insurance Companies Act are almost identical.

I will not belabour the issue, honourable senators. The point is that Bill C-31 does not grant that type of an exemption. The last time I looked, the provinces had jurisdiction over securities measures. If you issue a prospectus, you must declare all material facts. Thus, if you owe money to the EDC, Bill C-31 puts you in the unusual, bizarre position where you must seek the permission of a federal Crown corporation to meet your legal obligations under a provincial statute.

[Translation]

What is going on, honourable senators?

[English]

The EDC has managed fine so far without such a clause. This clause should be struck from the bill, as there is no demonstrated need for it. We moved an amendment in the committee; I have told honourable senators what happened. Senator Oliver moved an amendment last Thursday. We saw what happened as a result of the vote last evening. All I can do is add to my colleague Senator Tkachuk's words and say, please, honourable senators,

when you finally deal with this bill, give careful consideration to the points we have made.

On motion of Senator Setlakwe, debate adjourned.

[Translation]

BUSINESS OF THE SENATE

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, today is Wednesday, a day on which committees sit at 3:30 p.m. With leave of the Senate, I move that the Senate do now adjourn and that all items on the Order Paper that have not been reached stand in their place.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Thursday, December 6, 2001, at 1:30 p.m.

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OFFICIAL REPORT
(HANSARD)

Thursday, December 6, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Thursday, December 6, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

BUDGET SPEECH

ACCOMMODATION FOR SENATORS IN COMMONS GALLERY

The Hon. the Speaker: Honourable senators, I would remind you that the budget speech will be delivered at 4:00 p.m., Monday, December 10, 2001. As has been the practice in the past, only senators will be allowed in the Senate gallery in the House of Commons so that any senators who wish to attend can be accommodated.

SENATORS' STATEMENTS

NATIONAL DAY OF REMEMBRANCE AND ACTION ON VIOLENCE AGAINST WOMEN

TWELFTH ANNIVERSARY OF TRAGEDY AT
L'ÉCOLE POLYTECHNIQUE

Hon. Joyce Fairbairn: Honourable senators, December 6 is the National Day of Remembrance. It is a day when women and men across this country gather in large vigils or in small groups or in solitude, often with candles and with roses. Tears are shed, out of sadness or anger, in memory of that morning 12 years ago when shocking words and images spread across the country and abroad of a bloody killing in a Montreal place of learning, l'École Polytechnique.

A deranged man, expressing his hatred for females and feminists, separated women students from their male classmates and systematically shot them dead. Fourteen bright and optimistic citizens with promising lives ahead were gone in minutes and the Montreal massacre became part of Canadian history.

Each year, we in this chamber remember them by name: Geneviève Bergeron, 21; Hélène Colgan, 23; Nathalie Croteau, 23; Barbara Daigneault, 22; Anne-Marie Edward, 21; Maud Haviernick, 29; Barbara Marie Klueznick, 31; Maryse Leclerc, 23; Annie St-Arneault, 23; Maryse Laganière, 25; Michèle Richard, 21; Anne-Marie Lemay, 22; Sonya Pelletier, 28; and Annie Turcotte, 21.

Every year, I am asked: Why do people keep up this pitch to emotion? Why not just let it go, get beyond it? The answer is simple: How can we get beyond it when most recent statistics tell us that more than half of the women in this country have been victims of at least one act of physical or sexual violence since the age of 16.

Females make up 85 per cent of victims of sexual assaults, 78 per cent of those criminally harassed, and 62 per cent of kidnappings and abductions. Seventy-eight per cent of all female victims were victimized by someone they knew — a close friend, a business acquaintance, a partner, a family member.

We remember because with all the publicity, all the programs, all the legislation, those numbers remain stubborn. Violence against women and children continues to grow in communities of our country and around the world. At this point in time, we are riveted by pictures and stories from far off Afghanistan about the stunning lack of opportunity for women and their daughters to learn, participate and contribute in their society. It is hard to believe and we want to help. However, it is even harder to believe in our own prosperous, caring country where access has indeed opened up to women, where opportunity has changed in almost every sector, where equality is a word that can indeed be used to describe the advance of women. Yet there are still legions of sisters in poverty, homelessness, pain, solitude and fear, trying to raise children who then will face the same barriers.

We are, I believe, making progress, but attitudes are painfully hard to change. It can only succeed if we can find a way as families, as teachers, as legislators and as governments to raise this generation of children with values of tolerance, generosity and hope — not the noise of war and urban violence, and the silent acquiescence that violence within families behind closed doors is nobody's business and certainly not the concern of a nation.

Surely, honourable senators, we owe it to the memory of the 14 women we honour today to move ahead. It is a question of will, women and men together, and we still have a very long way to go.

Hon. Senators: Hear, hear!

•(1340)

Hon. Marjory LeBreton: Honourable senators, I, too, rise today to speak in remembrance of the 14 young women who were tragically killed at l'École Polytechnique in Montreal on this day in 1989. I vividly remember my own shock and horror when news of these unspeakable acts quickly spread to the offices of the Prime Minister, where I was at the time.

We all know the sorry details. A 25-year-old male, who apparently was a product of a violent home and who had a fascination with the military and war films, entered the School of Engineering building. He was not a student, although he had unsuccessfully sought admission to the school. He was carrying a .22-calibre semi-automatic rifle. Walking into a classroom, he shouted, "I want the women." He separated the young men from the women, ordering the men to leave the classroom. The women were lined up along one wall, and he began shooting at them, yelling anti-feminist insults.

The killer continued his hunt, stalking victims unobstructed. In addition to the six in the classroom, one woman was murdered near the copying room, three more in a cafeteria, and then in a second classroom he murdered four more before killing himself. By the end of the carnage, 14 women were murdered and 13 others, nine young women and four young men, were injured.

The tragic events of September 11, 2001, provided a wake-up call to Canadians, and indeed citizens of the world. Violence surrounds us at all levels. That has been just as evident here in Canada as around the world, where the news reminds us daily of the results of violence. We only have to turn on our television every morning or listen to our radios.

In 1991, Madam LaPointe-Edward, mother of murdered victim Anne-Marie Edward, founded the federally incorporated December 6 Victims Foundation Against Violence. I have had the honour of meeting Madam Lapointe-Edward on many occasions. When asked the purpose of the foundation, she responded:

To fight violence in its every facet, and in particular violence against women, ...to keep the memory of the tragedies of our daughters alive.

On this December 6, honourable senators, we remember those 14 young women who were about to start exciting new chapters in their lives. We also know that women continue to be victims of violence across the country. We must stop this violence and we must think about the seriousness of this, not only today on this important day of remembrance and reflection, but on each and every day until we have put an end to this human suffering.

[Translation]

Hon. Lucie Pépin: Honourable senators, December 6 each year is now known as the National Day of Remembrance and Action on Violence Against Women.

This day, instituted by Parliament in 1991, marks, as mentioned by Senator Fairbairn and Senator LeBreton, the sad anniversary of the tragedy that took place in 1989 at l'École Polytechnique de Montréal, in which fourteen young women lost their lives. December 6 provides us with an opportunity to remember them, to think of other women who have lost their lives to violence, and to the women who live every day with the threat of violence.

Many women of all ages and from all ethno-cultural, cultural and socio-economic backgrounds live every day with the threat of violence. This is a highly complex phenomenon, taking a variety of forms — psychological, physical, sexual and economic — and one with serious consequences for those who are subjected to it, as well as for society as a whole. This national day must also be an occasion for us to speak out vigorously against violence toward women and girls, both in our own society and elsewhere in the world.

On December 6, we are especially invited to reflect on this phenomenon. We need to think of meaningful measures to prevent and eliminate any act of violence targeting individuals because they are female.

Honourable senators, let us take a few moments to imagine a world without violence. Some may react by saying this is a noble yet idealistic thought. I agree. However, is it not an ideal toward we must never cease to direct our efforts?

Today, knowing that we are at war in Afghanistan, let us ask ourselves how many women and children will be the victims of atrocities? Violence sometimes strikes blindly and indiscriminately. This is something that concerns us all. That concern, coupled with a feeling of responsibility, must prompt us to reflect more deeply on the violence that is such a scourge in our communities.

Honourable senators, I urge you to spare no effort to ensure that these intolerable acts are prevented.

[English]

Hon. Vivienne Poy: Honourable senators, I rise today on this National Day of Remembrance and Action on Violence against Women to remind us all that violence against women in Canada and in the world continues unabated.

Over half of all Canadian women have experienced at least one incident of violence. Over one quarter of Canadian women have been assaulted by a spouse. Last year, 67 women were killed by a current or ex-partner. That is more than one death per week. In Ontario alone, 21 women have died so far this year at the hands of their partners. Children who witness violence at home on a regular basis bear the scars throughout their lives.

Today's National Day of Remembrance was established in 1991 by Canada's Parliament after the Montreal massacre, when 14 promising young female students studying at l'École Polytechnique de Montréal were singled out for murder because of their gender. This day represents an opportunity to reflect on these young women, with all their hopes and dreams, and to think of their families who continue to mourn their deaths. It is also a time to reflect on the phenomenon of violence against women in our society and those who live with violence on a daily basis. We need to speak out against violence; otherwise, our silence will serve to condone it and it will continue.

This fall, an inquest is being held into the death of Gillian Hadley, who was killed by her husband last year in Ontario. Only a few days ago, a man identified as an ex-boyfriend was charged with the brutal deaths of Linda Anderson and her boyfriend, John Heasman, in British Columbia. Perhaps Gillian, Linda and John would be alive today if someone had intervened before it was too late. We will never know.

Today, events are being held across the country to raise awareness about violence against women and to mourn those who have suffered or died. A special ceremony is being held in Parc Montréal, Place-du-6-décembre-1989. Following some speeches, a rose will be placed on each of the monument pillars dedicated to the victims of the massacre on December 6, 1989.

Honourable senators, please do not allow the deaths of these young women to have been in vain. Let us all work toward a safe and secure society for both men and women so that there will be no more young people to mourn.

[Translation]

OFFICIAL LANGUAGES

AUDITOR GENERAL'S REPORT—CHANGES TO PROGRAM IN SUPPORT OF COMMUNITIES

Hon. Jean-Robert Gauthier: Honourable senators, in her first report tabled recently, the Auditor General of Canada, Sheila Fraser, notes significant discrepancies in the evaluation of projects submitted by francophone and Acadian communities and a lack of rigour in the analysis of the results.

The Auditor General noted a number of factors essential to the proper management of the program that require improvement: the management framework, performance information, project assessment and analysis of results achieved. The objective of the program remains very vague, and the results expected are not clearly defined.

Of the \$9 million audited, the auditors found that the general application forms were not filled out and the applications were incomplete. The Auditor General criticized the Department of Canadian Heritage as well for never asking organizations for a revised performance plan when funding less than that sought was granted.

In addition, the Department of Canadian Heritage had no standards for funding applications so that organizations were not informed of funding decisions until the end of June, or sometimes July, a fact that obviously had an adverse effect on activities planned. It was also noted that only 39 per cent of reports had been examined by officials of the Department of Canadian Heritage.

The Department of Canadian Heritage accepted all of the Auditor General's recommendations — which is very good — and promised to evaluate the Support to Official Language Communities Program in 2002-2003.

This is an area for serious examination by Parliament. It would be appropriate to invite the Auditor General, Ms Fraser, to properly delineate the problem, to talk to us about it. The Standing Joint Committee on Official Languages should also

[Senator Poy]

invite the Minister of Canadian Heritage, responsible for the program and the funding, and not fail to invite the official language communities in a minority situation, which, in the end, must benefit from these projects.

•(1350)

NATIONAL DAY OF REMEMBRANCE AND ACTION ON VIOLENCE AGAINST WOMEN

TWELFTH ANNIVERSARY OF TRAGEDY AT L'ÉCOLE POLYTECHNIQUE

Hon. Gérald-A. Beaudoin: Honourable senators, today marks a tragic and sad anniversary. On December 6, 1989, a man, Marc Lépine, killed 14 women. He killed them because they were women. This terrible tragedy took place at l'École Polytechnique in Montreal.

This tragedy defies comprehension.

We must continue to reflect on the underlying causes of violence. Society today is no doubt more aware. Yet, unfortunately, we are not immune to such violence. For this reason, we must do everything possible to prevent it, starting with testing persons who display serious behavioural problems.

All levels of government, each in their area, must act. Indeed, we must all do our share to eliminate violence in all of its forms. All of society will benefit.

Finally, I would like to highlight the extraordinary courage of the families and friends of the victims and express to them that they are not alone; they are in our thoughts.

ROUTINE PROCEEDINGS

TREASURY BOARD

2001 ANNUAL REPORT TABLED

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, pursuant to rule 28(3), I have the honour to table in Parliament the annual report of the President of the Treasury Board, entitled "Canada's Performance 2001."

AIR CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—REPORT OF COMMITTEE

The Hon. Lise Bacon, Chair of the Senate Standing Committee on Transport and Communications presented the following report:

Thursday, December 6, 2001

The Standing Senate Committee on Transport and Communications has the honour to present its

NINTH REPORT

Your Committee, to which was referred Bill C-38, An Act to amend the Air Canada Public Participation Act, has, in obedience to the Order of Reference of Wednesday, November 28, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LISE BACON
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

TRANSPORT AND COMMUNICATIONS

BUDGET—PRESENTATION OF REPORT OF COMMITTEE

The Hon. Lise Bacon, Chair of the Senate Standing Committee on Transport and Communications presented the following report:

Thursday, December 6, 2001

The Standing Senate Committee on Transport and Communications has the honour to present its

TENTH REPORT

Your Committee, which was authorized by the Senate on September 26, 2001, to examine issues facing the intercity busing industry, respectfully requests, that it be empowered to adjourn from place to place within Canada, to travel outside Canada and to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

LISE BACON
Chair

(For text of report, see today's Journals of the Senate, p. 1085.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Bacon, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 2001

REPORT OF COMMITTEE

Hon. Lorna Milne, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, December 6, 2001

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

THIRTEENTH REPORT

Your Committee, to which was referred Bill C-40, *An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise cease to have effect*, has, in obedience to the Order of Reference of Tuesday, November 20, 2001, examined the said Bill and now reports the same without amendment.

Your Committee notes that it instructed the Law Clerk and Parliamentary Counsel to correct a printing error in the parchment. On page 12, in clause 45, line 29 in the English version of the Bill, the words "after section 15:" should be in lower case. In the French version, same page and clause, line 30, the words "suivant l'article 15, de ce qui suit:" should be in lower case.

Respectfully submitted,

LORNA MILNE
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read a third time?

On motion of Senator Robichaud, bill placed on of the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

CANADIAN COMMERCIAL CORPORATION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-41, to amend the Canadian Commercial Corporation Act.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Hervieux-Payette, bill placed on the Orders of the Day for second reading two days hence.

THE SENATE

NOTICE OF MOTION TO AUTHORIZE BROADCASTING OF PROCEEDINGS AND FORMATION OF SPECIAL COMMITTEE ON RESOLUTION

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Tuesday next, December 11, 2001, I will move:

That the Senate approve the radio and television broadcasting of its proceedings and those of its committees, on principles analogous to those regulating the publication of the official record of its deliberations; and

That a special committee, composed of five Senators, be appointed to oversee the implementation of this resolution.

[English]

CANADA LOVES NEW YORK RALLY

NOTICE OF INQUIRY

Hon. Jeremiah S. Grafstein: Honourable senators, I give notice that on Tuesday next, December 11, I will call the attention of the Senate to the "Miracle on 52nd Street," the Canada Loves New York Rally in New York City on December 1, 2001.

● (1400)

QUESTION PERIOD

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—BRIEFING OF LEADER OF THE GOVERNMENT ON PROCUREMENT PROCESS

Hon. J. Michael Forrestall: Honourable senators, yesterday, under Senators' Statements, I read a document into the record. My question is based upon that statement and is directed to the Leader of the Government in the Senate.

Who and/or what department briefed the Leader of the Government in the Senate on the Maritime Helicopter Project on June 11 of this year?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. The briefing was given to me by representatives of

Public Works and Government Services Canada and the Department of National Defence.

Senator Forrestall: Honourable senators, can I draw from that that it was, in fact, Mr. Paul Labrosse of the Maritime Helicopter Project?

Senator Carstairs: Honourable senators, Jane Billings was the principal representative at that meeting.

Senator Forrestall: Honourable senators, I thank the minister for that information.

OPERATION APOLLO—ASSIGNMENT OF SEA KING HELICOPTERS—MISSION CAPABILITY

Hon. J. Michael Forrestall: Is it true that the Sea King on HMCS *Charlottetown* has gone through at least two, and I believe three, engine replacements since the start of its deployment on Operation Apollo?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question about the Sea King that has been assigned to HMCS *Charlottetown* as part of Operation Apollo. I have no knowledge about engine replacements, but the honourable senator is well aware of the amount of maintenance that is required on all Sea Kings, no matter where they are. Therefore, one would anticipate a certain amount of maintenance activity when these helicopters are on assignment, as they are as part of Operation Apollo.

Senator Forrestall: Honourable senators, surely three engine replacements, when we have barely started into the program, is not what one would call good enough.

The honourable senator may not know the answer to my next question, but I believe she can find it, since I was able to do so.

We know that Canada dispatched six Sea Kings for Operation Apollo. One third of these six Sea Kings will not be available for operation. Even when it does fly, the Sea King aborts its missions 60 per cent of the time and flies only 29 per cent of the time.

Can the minister tell us which of the Sea Kings on the six ships are ready to fly a mission today?

Senator Carstairs: Honourable senators, the helicopters that were assigned to Operation Apollo are kept in fit and ready condition at all times. That requires a lot of maintenance activity, which activity is ongoing. The helicopters are repaired and maintained while they are onboard the ships that are part of Operation Apollo.

Senator Forrestall: With all due respect to the minister, my question was how many of those Sea Kings are able to carry out a mission today. As I suggested, if the minister does not have the answer today, she need not lecture us on the maintenance program. Thank God it is in place. We are all grateful for that. However, that has nothing to do with how many Sea Kings can fly today. The reputation of our nation rests on our ability to make a contribution to this dreadful war on terrorism.

Senator Carstairs: Honourable senators, Canada's contribution to Operation Apollo has been paid tribute to on a number of occasions by the President of the United States, the chief of the Armed Forces of the United States and by the Secretary of Defence of the United States. Clearly, our allies in this project think our equipment is performing well and is combat capable, which is the test that must be met. I have no reason to believe that the Sea Kings are not combat capable, as they are expected to be in this operation.

OPERATION APOLLO—MISSION CAPABILITY OF CF-18 FIGHTER JETS

Hon. Gerry St. Germain: Honourable senators, my question is directed to the Leader of the Government in the Senate. Yesterday, she inferred that I know nothing about helicopter servicing. She is right that I am not an expert, and I never expect to be. Perhaps she is. It is obvious by the way in which she is responding to Senator Forrestall's questions that she is trying to make the world believe she is.

Today, CF-18s are being cannibalized for parts, and that is slowly killing morale. The Leader of the Government in the Senate made mention of the Chief of the Defence Staff saying that everything is up to scratch. We well know that regardless of which party is in power, military people usually do not speak until they are retired.

A former pilot has stated that airplanes are being cannibalized. These are not helicopters, but fixed-wing aircraft, CF-18s, the ones for which Canada had to borrow batteries from the Spanish Air Force during the Kosovo campaign.

What is the reaction of the minister to this? Does she feel that this retired military pilot is being deceptive and untruthful?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I did not imply yesterday that Senator St. Germain knew nothing about helicopters. In fact, I said that he was a pilot and clearly has expertise as one. If he considers that to be an affront, I am sorry. I was just congratulating him on his acknowledged expertise.

The information to which the honourable senator refers was in a newspaper article today, provided by an individual who served with distinction in our armed services. He is certainly entitled to that opinion. However, that is not the opinion of the government.

Senator St. Germain: Honourable senators, perhaps the opinion of the government is not that important when we are sending crews into the air with equipment that is in many cases obsolete. It is unquestionable that if the equipment requires this much service, the risk factor must be higher. Regardless of what the government says, why are we not listening to the people who have actually flown these airplanes and are being asked to put at risk their lives and the lives of others?

We have had this discussion here before with previous ministers who have sat in the chair where Senator Carstairs now sits. With my expertise, I honestly believe that it is very dangerous to ask personnel to fly any aircraft, helicopters or otherwise that require this amount of service. There are alternatives such as leasing.

Senator Carstairs: Honourable senators, it is very interesting that the honourable senator says we do not seek the opinion of the individuals who are flying these aircraft. A recent article in the *Victoria Times-Colonist*, a newspaper from the capital city of the beautiful province of British Columbia, indicated that both individuals flying the Sea Kings and their family members were extremely positive about the aircraft and their experiences on it.

●(1410)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

ACCESS OF PARLIAMENTARIANS TO PARLIAMENT HILL

Hon. Eymard Corbin: Honourable senators, I wish to address my question to the Chairman of the Standing Committee on Internal Economy, Budgets and Administration. In so doing, I am referring to the rights and privileges of all parliamentarians.

Let me begin by saying that there is nothing that I hate more than an arrogant police officer. Thank God they are few and far between. I am tempted to name the corporal on duty at the main entrance gate this morning between 11:45 and 11:50 a.m. when I happened to access the Hill. I will not do so, contrary to the promise I made him.

It is well known that I personally consider many of the measures put in place as sheer panic and hysteria. During the past weeks, in all instances since the events of September 11, although I question the current practice of stopping parliamentarians, including senators, for search purposes, I have complied with the practice reluctantly, in view of the long-established parliamentary privilege of an unfettered right of access to Parliament when it is in session.

I was in a very inappropriate way ordered to open the hood of my car. I said I would not do so. I should indicate that, contrary to the practice in recent weeks, there were no Senate constables attending. However, I did notice the Senate traffic van and I indicated to the corporal that I wish for him to ask them to come forward. He signalled. They did not respond. His attitude was that they can sit in the van if they want to but he has a job to do.

I happen to have rights and privileges, like everyone else on the Hill, so I did not open the hood. He performed the under-car search with a mirror, as I have submitted myself to every day since the events of September 11.

I think that the time has come to put some order in the procedure. It serves no good purpose to change the RCMP officer every day or every second day. Most of the officers have been gentlemen and gentlewomen, but I make a distinction between them and this one particular individual. I do not know if when on regular duty he is in charge of bicycle gangs or drug squads.

I do not care for Eymard Corbin, but I care for the senator, and I care for my unfettered right to access the Hill and go to my work.

I see a double standard. Individuals arriving at the Hill on foot come in with bags on their backs. They are not checked at all.

I realize the question is long, and I realize that there are many little committees and heads and responsible people who deal with these matters. I certainly do not want this matter to be sent to the Standing Committee on Rules, Procedures and the Rights of Parliament. My understanding is that the Internal Economy Committee has a say and, indeed, is concerned with this matter. Therefore, I would like to obtain assurances from the chair of the Internal Economy Committee that this matter will be taken up as soon as possible so that there can be put in place a screening mechanism that is respectful of the right of senators to come to their offices to do their work without undue hampering or arrogance on the part of the people charged with applying whatever measures are deemed necessary in the circumstances.

Hon. Richard H. Kroft: Honourable senators, there is never any reason for anyone in any capacity to act in an inappropriate fashion in carrying out their duties. I would not want to speak to the conduct of a particular individual in a particular case.

Let me make a more general comment, honourable senators. First, since the honourable senator has addressed his question to me in my capacity as chairman of the Internal Economy Committee, let me assure him that this entire situation is under a constant monitoring and review by the committee. The administration through the clerk is part of a process whereby the Senate is represented in the broad monitoring of security issues on the Hill. I would like to say quite clearly that if there is implicit in the question — and I am not sure if there is — that a different rule should apply to us as senators or as parliamentarians than to anyone else coming on to the Hill, at that point I would take issue with the honourable senator. I believe that consideration has to be given to the rights and privileges of senators and members of Parliament. Unfortunately, it is possible that those who will do us ill have unfettered access to senators' cars when they are parked in places that are not controlled or observed at all times.

The policy is that all senators, all members of Parliament and all members of the administration approaching the Hill are treated equally — no better and no worse, if I may put it in simple terms, than anyone else. To try to qualify security measures according to some other standard would be inappropriate and would be ineffective in terms of good security measures.

[Senator Corbin]

Senator Corbin: Honourable senators, I thank the Honourable Senator Kroft for his amiable answer. I think he has it half right. There is such a thing as privilege for parliamentarians. I think it is being abused currently.

ANTI-TERRORISM BILL

ABILITY OF POLICE OFFICERS TO HANDLE ADDED POWERS

Hon. Eymard G. Corbin: Honourable senators, I wish to make just one other comment. I will address this matter to the Leader of the Government in the Senate.

Of course, I do not expect, as a member of John Q. Public, to be treated any differently from any other Canadian citizen. However, as far as coming to my work, to this place — and the City of Ottawa would still be a log town if it were not for the Parliament of Canada — I expect to be treated with due regard. I think the matter that I raise deserves serious attention. I could quote to honourable senators an instance where Herb Gray, the Honourable Member for Windsor West, raised a question of privilege, claiming that a RCMP roadblock on Parliament Hill meant to constrain demonstrators constituted a breach of members' privileges by denying them access to the House of Commons. The Speaker found *prima facie* a case of breach of privilege.

Honourable senators, my concern is this: Under Bill C-36, which is now before the Senate, there will be granted to police forces quite a few powers. I am reconsidering my support for that bill in light of the attitude of certain members of police forces. I say this very seriously. I have been fighting with “mon libre arbitre” as to how I would handle myself on that vote.

If police officers treat a senator the way I was treated this morning — in an arrogant fashion, and without witnesses — how will they treat other Canadians, Canadians who do not have a white face like me or a French Canadian name? This has been a matter of grave concern and that is why I have a problem.

•(1420)

Hon. Sharon Carstairs (Leader of the Government): One of the issues we have to deal with seriously within our society is that police respect the laws of the country as do the citizens of the country. Respect works both ways.

Over the years, we have established, both at the federal level through the RCMP Complaints Commissioner as well as in individual provincial authorities, civilian bodies that examine complaints made about individual police officers when their activities are inappropriate and/or illegal. Those bodies exist to provide the assurance to citizens, just as they should provide a certain amount of assurance to the honourable senator, that should police officers overlook their responsibilities to the public, they can be held accountable. Obviously, to raise a complaint with the RCMP complaints board would be one of the avenues that Senator Corbin could seek. The other, of course, relates to a breach of his privilege.

Honourable senators, we are in very difficult times. We must have access to the Hill. There is no question about that. We must also recognize, as Senator Kroft has put so well this afternoon, that those vehicles that we drive on to the Hill are rarely within our safekeeping or our observance 24 hours a day. They simply are not. We park them in garages and parkades — we park them anywhere. I would hope that all of us would recognize that we have a responsibility when we bring an automobile onto the Hill that others could have potentially tampered with that vehicle and that they are, perhaps, more likely to have chosen our vehicle because they know it has ready access to the Hill as opposed to another vehicle. I would urge all honourable senators to follow the rules that have been set down.

However, I would also urge the Internal Economy Committee to ensure that the bottom line is that respect should be paid to all individuals who come to the Hill, such as senators, members of Parliament, staff and visitors, respect that is appropriate to the fact that they are living in this country.

Senator Corbin: Honourable senators, I have just one final point. The only time my vehicle is not under my watch and under my keep is when I park it here on Parliament Hill. I am a little bothered that some people can come up on the Hill with bags on their backs. Who is protecting me while I am here?

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

ACCESS OF PARLIAMENTARIANS TO PARLIAMENT HILL— POSSIBILITY OF MEETING WITH SECURITY GROUPS

Hon. Marcel Prud'homme: Honourable senators, I was at the first meeting where we established a certain rule, and Senator Kroft was there. We had a meeting with the RCMP. I will repeat to the senator that if we had let security groups take over, some were ready to replace our guards with armed military inside Parliament. That day has not come as far as Marcel Prud'homme is concerned.

Honourable senators, intelligence should prevail. We must not be paranoid, either. We know that these are difficult times, but I am tired of hearing "the world changed." Before September 11 and since there have been other events in the world that were as grave as that.

The RCMP told us that at any time there is a lady who is specifically charged with this issue in the RCMP. Within half an hour, they were at our disposal here with Mr. Gourgue, who did a good job.

To have some consistency, before we leave for the Christmas recess, perhaps Senator Kroft would see fit to schedule a meeting of interested groups. Otherwise, there are discrepancies. On one morning, you can get on to the Hill in a taxi, and then on another morning when you are in a hurry they say no. It depends on who is at the gates. The Prime Minister's Office told us no more cars.

What is this? Anyone can use anybody's name? It makes no sense. We are not children.

There should be consistency. We should remember that senators and members of Parliament are masters of their own Houses on the Hill. We have two Speakers who should be the masters. Do not let anyone else decide what should take place on the Hill. We are ready to cooperate, and the only way to do that is to ask those who are responsible here not to be too accommodating, and, perhaps to appease everybody, to have consistency. It would be time to revise how Christmas celebrations or any other celebration will be handled while we are absent, especially now that we are entering into a new epoch. We do not want to create a fortress mentality, but we want to create a well-protected Parliament Hill. We do not want to go either extreme.

The only person who can do that is the Chairman of our Internal Economy Committee. Have another of these meetings, a round-table discussion where every senator and member will be invited. Not many will show up. Those who are interested will show up. We will then proceed. When we come back in February, the time may have come to revise what will take place.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I think the question was as much for Senator Kroft as for me, but Senator Kroft and I will have a further discussion about this matter.

Hon. Herbert O. Sparrow: Honourable senators, as the issues are changed affecting security and entry on to the Hill, perhaps we should have a report from the Internal Economy Committee about security. I am aware that I and others are not familiar with what is taking place with respect to security on the Hill. If there is a problem, perhaps it should be explained to the Senate as a whole from time to time as the regulations change.

FOREIGN AFFAIRS

AFGHANISTAN—INITIATIVES TO BUILD CONDITIONS OF PEACE

Hon. Douglas Roche: Honourable senators, my question is to the Leader of the Government in the Senate. Last week, I raised the question of what Canada was doing to foster a dialogue and mediation concerning the establishment of a future government of Afghanistan and to bring a just peace to the area and prevent military action from spreading through the region.

The government leader said this question deserved the time and attention of cabinet and that she would bring this message to cabinet, adding at page 1821 of the *Debates of the Senate* that "Canada has unique roles that it can play on the world stage."

I concur with this statement. Now I ask the Leader of the Government this: Can she tell the Senate exactly what initiatives the government is taking to build conditions of peace in and around Afghanistan?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. The meetings in Bonn, which ended so successfully yesterday and in which the Canadian government was actively a participant in the sense that we lent our support to all of the initiatives that were forthcoming, are indicative of the strong role that Canada will play.

As to what specific measures the Government of Canada will take, I have to tell the honourable senator that he will have to wait for that specific answer. I can assure him that it is a matter of discussion and of active debate. It is a matter of ongoing decisions, and the announcement of those decisions will ensue over the next little while.

• (1430)

TREASURY BOARD

AUDITOR GENERAL'S REPORT—SOLE SOURCING OF CONTRACTS FOR PROFESSIONAL SERVICES

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate. Two years ago, former Auditor General Denis Desautels identified serious problems about the government oversight of sole-source professional service contracts, and I remember talking about the same subject in my speech on the budget that year. His successor Sheila Fraser has done a follow-up and found that, while the government has improved the training of those who deal with these contracts, it has basically ignored recommendations to improve managerial oversight. We are told:

The Treasury Board secretariat continues to reject the recommendation to have departments with high levels of sole-sourcing conduct annual reviews of their compliance with the regulations.

Why is the government not willing to ensure that those contracts for professional services are in fact complying with the government regulations? Is it afraid that it may turn up questionable hiring practices?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator noted, Auditor General Sheila Fraser did say there have been some improvements. She did say that there was a way yet to go. I can only tell the honourable senator that the recommendations of the Auditor General are being reviewed. We will try to continue to make improvements, as we have over the last couple of years.

The Hon. the Speaker: I regret to advise the 30 minutes for Question Period have expired.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in the chamber today a delayed answer in response to a question raised by Senator Lynch-Staunton on November 20, 2001, concerning the invitation of the Right Honourable Brian

Mulroney to the investiture of Nelson Mandela as an honorary citizen.

[English]

PRIME MINISTER'S OFFICE

INVITATION TO RIGHT HONOURABLE BRIAN MULRONEY TO INVESTITURE OF NELSON MANDELA AS HONORARY CITIZEN

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Could we have it read into the record, please?

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the guest list for the ceremony to honour Mr. Mandela was prepared by officials responsible for protocol in the Department.

Former prime ministers were not invited to the ceremony.

Had Mr. Mulroney or any other former Prime Minister expressed an interest in attending the event, he or she would have been accommodated.

ORDERS OF THE DAY

CARRIAGE BY AIR ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-33, to amend the Carriage by Air Act, and acquainting the Senate that they have passed this bill without amendment.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to begin with Reports of Committees, Item No. 1, consideration of the committee's report on Bill C-7, and continue with the other items in the Notice Paper in their respective order.

[English]

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE CONTINUED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, with amendments) presented in the Senate on November 8, 2001.

Hon. A. Raynell Andreychuk: Honourable senators, I expressed my grave concerns about Bill C-7 at second reading, in particular its complexity and the horrific injection of new resources that would be necessary to make the legislation work. I was also concerned that those scarce resources would be deflected into creating new structures, rather than providing new dollars for community and alternative measures to the criminal justice system. In other words, I thought that dollars should flow to the front end and not the back end of criminalizing youth and not affording early protection for citizens.

Also, I was concerned that the bill mirrors the adult system creating, in essence, a parallel system, while stating it was not an adult justice system and was one peculiar to young people. I felt that it simply delivered the criminal justice system with youth clothing. These perceptions were reinforced by the majority of the 60 witnesses that we heard at the committee hearings.

However, in discussion with the committee members of the Standing Senate Committee on Legal and Constitutional Affairs, I was persuaded that the role of the Senate would be best served by improving and enhancing the legislation and also ensuring compliance with national laws and international obligations, if the government was determined to proceed. Therefore, I supported — some strenuously, others less so — a package of amendments that the committee, by majority, has placed before you in this report.

First, I should like to go on record in support of Senator Moore's amendments with respect to Aboriginal youth. As the Minister of Justice of Saskatchewan pointed out to the committee, those in the judicial system as a whole, and young persons in particular, are disproportionately represented by Aboriginals. Incarceration for Aboriginals continues to far outnumber other groups in Canada.

Even more troubling is the number of incarcerated young Aboriginals because the rehabilitative services, the social services — or whatever you wish to call that mix that makes up the front-end process — do not work for Aboriginal youth. Something is wrong, and we must question whether our concepts of justice and the modalities that we are meting out for justice fit our Aboriginal youth. We need to signal clearly to society that in all of our interests this appalling statistic cannot go on.

Minister Axworthy from Saskatchewan indicated that the concept of justice is dramatically different in the Aboriginal communities, and we must start addressing this difference. The amendments are at least a sign to authorities and to our Aboriginal people that we recognize Aboriginals should not continue to be dealt with as they have in the past. In light of the amendments in the Criminal Code for adults, surely Aboriginal youth need our attention and need a signal from us today, as Senator Moore pointed out.

I want to go to the first amendment that I proposed, which was to add an interpretive amendment about the compliance with the United Nations Convention on the Rights of the Child. Why do we need this? Let me give honourable senators a brief legal picture on international covenants.

In Canada, it is the executive that has the right to negotiate and enter into international treaties. Unlike in the United States, when Canada signs and ratifies an international agreement it does not form our national law. Even though Canadians glory in the fact we have ratified a treaty, it does not mean anything to our national law. In fact, in the United States, ratification does mean that it forms part of their domestic law. Therefore, in the United States, the act of ratification under their Constitution instantly incorporates international treaties into their law.

In Canada, however, the act of ratification is simply the indication of the intention that we will take steps to incorporate the particular convention into national law. In Canada, we need to transform international law into national law to give full force and effect to an international treaty. By ratification, the best that we can do is to signal to the international world our intention to take those steps. By not taking the steps to implement the international treaty in Canadian law, we are depriving Canadians, and in this case children, of their rights under the International Convention on the Rights of the Child. Canada has not passed any enabling legislation for the United Nations Convention on the Rights of the Child. There have been many words, many plans of action and much fanfare, but there has been no implementation.

• (1440)

The government, appearing before our committee in 1995, said that its amendments were in compliance with the United Nations convention, but the United Nations thought otherwise. In fact, Senator Pearson observed in the committee in 1995:

...the concern of the Committee in Geneva is a fairly strong criticism of our Government.

Bill C-7 does not state that it is the enabling legislation for those parts of the convention to do with the criminal justice system. Fully understanding that we will need other pieces of enabling legislation, both provincially and federally, to give full force and effect to the covenant, the minister, although questioned rather ferociously by the committee, again and again pointed to the fact that the government believes that the bill is in compliance with the United Nations Convention on the Rights of the Child. At no time would the minister concede that this was enabling legislation, however. She merely pointed out that she believed we were complying with it; in other words, that there was nothing in the act that would be contrary to the convention, in her opinion.

Honourable senators, that is not good enough. We need enabling legislation so that we do not have the same disparity that we have when we talk about the Charter of Rights and Freedoms in Canada. Every minister indicates that their legislation complies with the Canadian Charter of Rights and Freedoms, but honourable senators, we know that there is much disagreement later, and courts have often found that the government, through its legislation, has not complied with the Canadian Charter of Rights and Freedoms.

In other words, Canada could say that it is complying with the convention but the situation could be otherwise. Therefore, we need enabling legislation so that Canadians can go before the courts and utilize the full force and effect of the convention.

If Canada wanted to be bound by the treaty, it would have done so, as it has done, coincidentally in Bill C-36. Bill C-36, the anti-terrorism legislation, clearly states in its preamble that one of the concepts of Bill C-36 is to put into compliance international treaties, and in the body of Bill C-36 it enumerates where and how.

That is all lacking in Bill C-7. Here, Canada states in the preamble that it is a party to the convention. It does not say that it wishes to be in compliance. It does not say that it is enabling legislation. Being a party simply means that you have signed and ratified; it does not mean that you intend to be bound by that convention. Clearly, it is clever, and I would ask honourable senators to look at the words of the preamble. It states:

WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms;

If the minister wished to be bound by the convention, the preamble would have said that Canada recognizes that young persons have rights and freedoms, including the convention, including the Charter, including the Canadian Bill of Rights. The preamble does not say that. Therefore, I think the government has clearly signalled that it does not, at this time, intend to be bound by the treaty, but simply will endeavour to conform to it, even if they have indicated that they wished to draw some attention to the treaty in the preamble to the bill.

R v. Hydro Quebec 1997, a Supreme Court case, states that it is permissible for a court to take into account a preamble, but that it is not mandatory for the courts to take into account such a preambular statement.

Therefore, without binding the government to enabling legislation, as they seem to be resisting, I introduced an amendment that would clearly support the minister when she told us what she was ready to do, which is comply with the

convention. The amendment allows the courts to interpret the act as if the government intended that, should there be any disagreement put forward in court, the act would be interpreted to give full and adequate compliance to the convention.

I do note that there was a concern that the amendment would have to pass back to the House of Commons and that there would not be time, and that the issue might be reopened in the House of Commons. Yesterday, we passed amendments to Bill C-24, an equally controversial piece of legislation, which were received favourably. I must say that they were introduced and received here, not at the instigation of the Standing Senate Committee on Legal and Constitutional Affairs but by the government, in consultation with Senator Moore. That bill, Bill C-24, is going back to the House of Commons.

I would point out that if we were to pass amendments to this bill, Bill C-7, that were initiated by the committee, they, too, could be returned to the House of Commons. There should be no difference. Surely the issues surrounding children are important enough to make certain that there are no anomalies or inconsistencies, and that the Convention on the Rights of the Child is not diminished. There is time. Furthermore, not only can we do it but we should do it to protect our children and to give them the full rights that were contemplated under the international convention.

Honourable senators, a second amendment that I put forward to the bill, in keeping with the spirit of the legislation and in order to ensure that there is consistency in the legislation, provided that clause 19 — and that is a clause that allows for a conference to be called by various actors in the court system — have the full due process and have fair representation of the child within the process. Throughout the legislation, there are many steps that, in a very thoughtful and complex way, give due process, due rights and due access to the child to have an independent status. The Convention on the Rights of the Child says we must treat the child in his or her own right as a person. I believe the bill goes way beyond that in many of the clauses. However, in the middle of the bill we stuck clause 19, saying that a conference on any decision within the act can be taken, but it does not say how and when. Rules can be put in place later, but we do not know whether due process and fair representation and the right to representation will be given to the child.

Some people say that perhaps information that is disclosed at such a conference could be used in a way that would be detrimental to the child. That was what the Juvenile Delinquents Act was all about. Under that act, we used all types of information, and then we were told that that was detrimental to the child. That is why the Young Offenders Act came into being, and again, that is why we now have Bill C-7 before us. If we wish to be consistent and not violate the Convention on the Rights of the Child, because the spirit there is to give the child rights, then we must put those rules into clause 19.

We have the right, as we do throughout all court processes, to withhold damaging information in sentencing that may do harm — for example, a psychiatric report that should not be shared with the accused. I believe that there are ways and means within the law, and I will not trouble honourable senators with the details.

The third amendment that I proposed had to do with teachers. From the work that I have done in the community, and from my years as a Family Court Judge, and from my experience in dealing with both teachers and students — and I emphasize students — I am convinced that teachers give to their students not only valuable education and educational tools, but more life skills and more personal attention than most of the Canadian public realizes.

• (1450)

In many cases, troubled youth are in the schools and teachers are the only resource available to these children when their parents are unwilling or unable to deal with them. Surely, we cannot look at the disclosure of information to teachers in the same breath as disclosure to the public. We give information and access to caseworkers, to social workers, to police and to a broad spectrum of caregivers, but we exclude the same teachers who do so much in the rehabilitation of children.

The Hon. the Speaker: I regret to advise Senator Andreychuk that her 15 minutes have expired.

Senator Andreychuk: May I be afforded the usual five minutes to finish?

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted for five minutes.

Senator Andreychuk: I thank honourable senators.

Certainly, Bill C-7 recognizes now on a permissive basis that teachers can get access, but only if someone else triggers that access. Surely, in this society, with the thousands and thousands of teachers that we have across our country, who support and help our children, they must have the access. It is not good enough to say we can arrange protocols and somehow they will get the information. We must trust teachers. The implication is that we do not trust them as a viable resource, but there are safeguards built into that clause now if we make it mandatory as opposed to permissive, as I have proposed in my amendment.

There are safeguards that they would only give that information when it is necessary, not only for that child but for the victims because, as we were told by other witnesses, the victims and the accused are often young persons and they are often in the same classroom. Think of the situation where the day after someone has been sexually abused, they are in a classroom

with the person who has been charged. Surely, teachers are the best resource to sort that out, and I for one want to underscore my support for the teachers and hence the amendment.

Finally, honourable senators, I would ask that the Senate underscore the need to support committee work. This is an extremely complex and technical bill. The committee received that bill by delegation from the Senate. We studied the bill. We processed the bill. We argued. In the best parliamentary form, we dialogued, we debated and we compromised. An overwhelming majority accepted the report. These are amendments further the government's intention. This is not a question of confidence for the government.

We are proud of our non-partisan work in our committees. Surely, this is the best example that we have in this highly complex bill. I would urge this chamber not to turn its back on the work of the committee.

If the report is not adopted, then one can ask a committee member, and particularly from our side with so few senators, why work endless hours in committee, produce a report, compromise and then not be heard? Why should witnesses, who told us they were not permitted to present evidence in the House of Commons, come to our committee? The chairman told them they would be listened to and that we would be open to their concerns. If we do not accept their report — and much of what we are saying comes from the witnesses — will these witnesses have confidence in the Senate?

Honourable senators, I say this with the greatest respect: The Senate of Canada will suffer itself. What facts will the Senate use to show that there should be no support for the majority opinion of the committee? I wonder.

I ask you finally, honourable senators, to accept the advice of the majority of the Standing Senate Committee on Legal and Constitutional Affairs so that Bill C-7 can be passed in an improved and enhanced form and in compliance with Canada's international and national obligations. It would be a clear signal to the people of Canada, and above all to the children of Canada, that the role of the Senate is important. This would be our valuable legacy for the betterment of children in Canada.

Some Hon. Senators: Hear, hear!

Hon. Gerry St. Germain: I have a question of the Honourable Senator Andreychuk, if she will entertain one.

Senator Andreychuk: Yes, of course.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I agreed to a five-minute extension. I do not mind if this period of time has not expired, but I do think that we should limit it to that.

[English]

The Hon. the Speaker: Honourable senators, I am advised by the Table that the five minutes have, in fact, now expired.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we would ask for another five minutes.

The Hon. the Speaker: Is leave granted, honourable senators?

[Translation]

Senator Robichaud: Honourable senators, I would agree to hear the question of the Honourable Senator St. Germain and, of course, the Honourable Senator Andreychuk's answer.

[English]

Senator St. Germain: Honourable senators, I will be brief. I understand that the senator has a heavy agenda.

I want to compliment the Honourable Senator Andreychuk on the comprehensiveness and the professionalism in the way she dealt with the subject and for the non-partisan way in which she has done much work in that area.

From her experience as a family court judge in Saskatchewan, the honourable senator made reference to our native youth. This is a challenge that faces all Canadians. We have gone all around the world dealing with issues like apartheid and have been very successful, yet it exists in our own inner cities. This is possibly unfair to the honourable senator, but could she succinctly give us any idea, based on her previous experience, as to how to deal with native youth?

We have native youth on reserves and in urban centres. The honourable senator made reference to the fact that we should be dealing with our natives in a different manner than the way we deal with the rest of our community. I know this is unfair to ask the honourable senator to answer this question given the time constraints, but it is of major concern. It is one of the most contentious and important issues that face our country. I believe that the Minister of Indian Affairs and Northern Development is trying to do an excellent job. He has cut back funding to political native groups and he is saying that the funding will go to the people. What are the comments of the honourable senator, if I may ask?

Senator Andreychuk: I thank the honourable senator for his question.

Honourable senators may have been reading about much of our work in the committee, but Senator Chalifoux spoke superbly about legal aid and the problem. We know what the problem is, I believe. As Minister Axworthy said to our committee, the justice

system and the concepts upon which it is built really are not where Aboriginal people come from. They are not accustomed to adversarial systems to resolve criminal issues and other conflicts. They come from a more conciliatory, such as the sentencing circle, and a compensation methodology. We are only beginning to realize the value of those measures that need to be addressed.

I would answer the question as the minister answered before our committee, which is why I was so taken by his answer. He said that the answers lie within the Aboriginal community and that we have to start a justice system that fits the Aboriginal community, that they can be part of, that they take charge of, that they feel is theirs. On that basis, I think the Supreme Court of Canada signalled that the Aboriginal people must be taken into account, and the government responded by amending the Criminal Code to say that in sentencing. In this amendment, Senator Moore is asking that we send the same signal for Aboriginal youth. In other words, we must start using community-based answers for Aboriginal youth because it is not good enough for Aboriginal adults. We have to nip it in the bud. Who is more deserving of our attention than Aboriginal youth?

Honourable senators, at various gatherings of international organizations, we have been supportive of international proclamations recognizing Aboriginal youth that are not yet full conventions.

•(1500)

If we can meld the two together and put our words into action, I think we will regain the credibility of the Aboriginal people.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs has provided us with its tenth report, which supports passage of an amended version of the proposed youth criminal justice act, Bill C-7. Senators have identified some issues and concerns that need to be taken seriously. However, I would argue that the amendments they have proposed raise even more serious concerns and may have unintended effects and consequences.

Youth crime and justice are complex phenomena about which many Canadians have strong views and many experts have opposing views. There is one thing about which they are united, however, and that is that reform in this area is greatly needed. For example, witnesses before the committee stated that Canada has the highest rate of incarceration of youth in the industrialized world. That is not a record of which we should be proud.

Other witnesses testified that there is not enough differentiation among violent young offenders and non-violent, lower-risk youth. It is a given that not everyone will support every element of the reform package but, as lawmakers, it is our duty to find solutions that are fair and workable, and that correct identified problems.

Let there be no doubt, honourable senators, that Canadians are disenchanted with the youth justice system under the Young Offenders Act, with the exception of the Province of Quebec. Let there also be no doubt that the current youth justice system is not working as well as it should be for all Canadians. Too many young people are charged, and often incarcerated, and with very poor results. Procedural protections are not adequate for our young people. Too many of our young people end up serving custodial sentences for very minor infractions. This applies particularly to our Aboriginal youth. Interventions are not appropriately targeted to the seriousness of the offences. There is disparity and great unfairness in youth sentencing. The youth system is not adequately meaningful for individual offenders and victims, nor adequately supportive of rehabilitation and reintegration.

Senator Joyal added to the debate quite appropriately last week when he stated:

To me, that is the fundamental principle. The child or the teenager is a person and has to be protected, and he or she has specific rights and specific obligations.

I agree 100 per cent with Senator Joyal. Children must be protected to the fullest extent possible, but they must also realize that they have certain obligations to uphold in this society, and that is why we must find balance, and that is what I believe this bill attempts to achieve.

As I read the transcripts of the committee hearings, I saw that there was support for the major reform components set out in Bill C-7, including a fair youth justice system that is totally separate from the system for adults; reduction in the overuse of incarceration by focusing on the most serious interventions, that is, custody, for the most serious offences and encouraging non-court measures and effective community-based sentences for the vast majority of youth crime; respect and protection of rights for young people facing the state's criminal law power by ensuring, among other things, that there are no longer any transfers into adult courts for trial purposes, which results in the loss of age-appropriate due process protections, like privacy rights; consequences that are meaningful and aimed at rehabilitation of the young person, ranging from enhanced front-end options to encourage understanding and repair of the damage caused by the behaviour to intensive rehabilitative custody and supervision orders aimed at the most seriously disturbed and violent youth; support for reintegration into the community after a period of custody; and opportunities for a more inclusive approach to youth justice that provides constructive roles for families, the victims, the youth themselves, community members and others with a stake in the development of our youth.

The proposed youth criminal justice act was many years in the making and was the subject of intensive and extensive

consultations. Significantly opposing views were addressed through ongoing discussions and many refinements to the proposed legislation. This is the second incarnation of this bill. It was once known as Bill C-3, introduced in another Parliament. I had serious concerns about that bill, honourable senators. I worked very hard to ensure that when it came back it was a very different bill. I am proud that there are 167 amendments. The government itself rewrote Bill C-3 to create Bill C-7, a much better and much more reflective bill, a recognition of what our young people and our society require.

Let me review some of the amendments proposed by the Senate committee. Senator Andreychuk made reference to the United Nations Convention on the Rights of the Child. That is a very broad convention, as she well knows. It is not one that many countries have ratified. She made reference to the United States. The United States has never ratified this convention. It has never committed itself to a single principle of this convention

Senator Nolin: Did Canada ratify it?

Senator Carstairs: It is quite fair to note that we have not committed ourselves to every article of the convention. Some honourable senators will remember when, in another life in this chamber, I introduced a bill to repeal section 43 of the Criminal Code because it absolutely flies in the face of the Convention on the Rights of the Child. I wish I could say that I received unanimous support for that initiative, which would have prohibited corporal punishment of children. I did not. Senators told me they did not want to go there.

Honourable senators, you cannot have it both ways. You cannot say that we want all the rights of the Convention on the Rights of the Child upheld in this particular bill but we do not want to go anywhere else on that convention.

In the "whereas" portion of this bill the government has included the following:

WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms;

The honourable senator who spoke just before me is absolutely right. It is in the preamble and not in the body of the bill.

However, honourable senators, I suggest to you that that is where Canadians are prepared to go at this time. They are not prepared to accept all of the rights that are alluded to in the United Nations Convention on the Rights of the Child because most Canadians, to my great regret, still think that corporal punishment of children is acceptable.

Another amendment proposes that rules on conferences must include the requirement that youth attend with counsel and that conferences must respect principles of fairness and natural justice.

• 1510 •

Honourable senators, the reason that this bill is different, that it treats children as children, and that it is a youth criminal justice bill and not part of the Criminal Code, is that we do not believe entirely in the adversarial system that pervades the Criminal Code when it applies to adults. We know that children need special things. The conferences that have been proposed in this bill are one of those special things.

The stated rationale for this amendment is based on the incorrect assumption that a conference is a decision-making forum that can have lifealtering consequences for the young person. Bill C-7 is very clear that the conference is advisory only. It provides advice to a decision-maker, such as a police officer. It is not a decision-making forum.

Interestingly enough, although we read the testimony with great attention to detail, we could not find a single witness who appeared before the Senate committee who indicated that this was a concern.

Conferences are supposed to be relatively informal proceedings that take place outside the formal justice system, but Bill C-7 contains very strong provisions to ensure that they are conducted fairly. Clause 3 provides that young persons are entitled to enhanced procedural protection, to ensure that they are treated fairly and that their rights are protected. Clause 3(b) says that measures taken with young persons must be fair and proportionate. Clause 3(d) reads as follows:

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes that lead to decisions that affect them...

Young persons have special guarantees of their rights and freedoms. These guarantees are all in the bill.

Clause 25 provides that young persons have the right to retain counsel at any stage of the proceedings, and before and during any consideration of whether, instead of starting or continuing judicial proceedings, to use an extrajudicial sanction to deal with the young person.

In addition, the Charter of Rights and Freedoms requires that the conferences comply with the principles of fundamental justice. This is a special treatment for young people, because young people need special provisions. A child is a child is a child: We must never forget that.

Most of us are aware of the horrific incarceration rates of Aboriginal youth in this country. In my province, in 1998-1999,

[Senator Carstairs]

75 per cent of sentenced custody admissions were identified as Aboriginal. The figure for Aboriginal youth in my province is 16 per cent, but the figure for Aboriginal youth put in custody was 75 per cent, many of these for very minor infractions. The kinds of things that we have established in this bill must not happen.

The numbers are just as alarming in Saskatchewan. Seventy-four per cent of youth admissions were Aboriginal, while only 15 per cent of the youth in the province were Aboriginal.

I share fully Senator Moore's concern in regard to the importance of protecting Aboriginal youth from this situation. It is endemic. That is why the change in focus in Bill C-7 from the present Young Offenders Act is so absolutely essential. We must make the differentiation between low-risk young offenders and high-risk, violent young offenders. That is why I have such difficulty, despite my empathy, with what Senator Moore has said and done with the amendment that he has introduced. Let me explain why.

The amendment would take part of the Criminal Code and impose it on this bill. We would take part of the Criminal Code, which is an adult code, and we would impose it on this bill. Let me tell you why I think that is dangerous. It is dangerous because there are two statements in the current bill that are very important to youth in general, and in particular to Aboriginal youth. The principle of the bill, clause 3 of the bill, specifically states that we must consider the conditions of these Aboriginal young people. We need to respond to the needs of Aboriginal young persons. We must respond to their needs. By putting in section 718.2 of the Criminal Code, we now ask the court to consider alternatives.

Honourable senators, I am very concerned that "consider" is a far weaker word than "respond." I am very concerned that, if this section is placed in this provision, judges will use it as the sentencing provision and will not turn to the principle of the bill, which says "we must respond." Instead, they will look to this amendment, which says, "we should consider." Honourable senators, I do not think that is good enough for our Aboriginal people.

The sentencing provision presently in Bill C-7 requires that judges look to the principle of the bill. This bill restricts the use of custody primarily to violent and serious repeat offenders. The effect of this provision will be to prevent the use of custody for a large number of our Aboriginal persons who are non-violent offenders and who are not serious repeat offenders.

In addition, the bill requires the court to consider all reasonable alternatives to custody for young persons, including Aboriginal young persons, and if there is an alternative, the court is prohibited from imposing a custody sentence. This provision, I would argue, is strongly and significantly more effective than 718.2 of the Criminal Code, which, I repeat, says that they need only to "consider" the alternative.

Another problem with the suggested amendment, I have to suggest, honourable senators, is that it will be the only mention, in the entire bill, of imprisonment. This may be a question of semantics, and you may say that semantics is not the issue here, but the reality is that when we refer to "in custody," we refer to incarceration. We do not refer to imprisonment. That is because youths are not adults. Even in our vocabulary, we must be careful to differentiate.

Honourable senators, one of the fundamental objectives of Bill C-7 is to reduce Canada's overreliance on custody. The suggested amendment, drawn from the Criminal Code, is neither necessary nor appropriate for youth.

The next two amendments, I have to suggest, honourable senators, not only deeply disturb me but they create within me a sense of horror. Honourable senators, I spent 20 years of my life teaching school. I believed fundamentally in the privacy rights of my students. I did not believe that I had the right to go into their lockers. I believed that those were their property. I did not believe that I had the right to go there, and I did not.

● (1520)

Honourable senators, a hallmark of our youth justice system is the general rule that the identity of young people should be protected. This allows for youth to be held fairly accountable for misdeeds, but also for them to overcome youthful transgressions by avoiding labelling and stigmatization.

Bill C-7 contains only very limited exceptions to the privacy protections for those receiving youth sentences. Witnesses before the Senate committee consistently emphasized the value of protecting young people from publicity.

Bill C-7 deliberately kept tight limits on the possibility of overriding the prescribed privacy protections for those receiving youth sentences. It could only occur after a conviction for a specified, serious, violent offence, and it was subject to judicial discretion, to continue the privacy protections based on considerations of rehabilitation and the public interest.

The proposed amendment to clause 110 of Bill C-7 allows for a weakening of the privacy protections for youth by confusing the tests for publication. It does not include rehabilitation as a required factor for consideration, but limits the judicial test to one of public interest. What about the child's interest? I firmly believe that the changes to the privacy protections as they relate to youth sentences proposed in this report would have a negative psychological effect and would impair the one thing that we are trying to do, which is to rehabilitate the young person. The proposed amendment will hurt young people. I urge honourable senators to oppose it.

Another proposed amendment comprises both privacy protections and judicial discretion in relation to the release of information. Bill C-7 permits specified youth justice professionals to share otherwise confidential information about a

youth with school officials and others engaged in the supervision and care of the youth, if that information is needed to ensure compliance with an order, ensure safety or facilitate rehabilitation. Given that shared information with school representatives is already available, I question why the suggested amendment would eliminate judicial discretion and require a youth judge to always share the information. Clearly, judges would want to share information to ensure safety, but this would be a very small number of cases and it is provided for. What if a school official has misused such confidential information in the past by spreading it to others, by ostracizing the youth?

I am very proud of the teaching profession, honourable senators. However, I have had experiences within that profession which would tell me that teachers do this — not many, thank God, but some. I can tell you of a teacher who, within five minutes of every single class, if there was an Aboriginal child in that class, that Aboriginal child was sitting outside the door. He did not like Aboriginal kids so he found excuses, every single day, as to why they did not have to sit in that classroom. Do you want to have somebody like that given information about a child? I do not.

I have to tell honourable senators that when I read the amendments I could understand where people were coming from on most of the other amendments. I simply could not figure out where you were coming from on this one.

Senator Andreychuk: It was from the Canadian Teachers' Federation.

Senator Nolin: From the teachers.

Senator Carstairs: It absolutely depressed me.

In my view, disclosure of confidential information to school representatives should be permitted and, in some circumstances, encouraged, but a wholesale disclosure by youth court judges should not be required. In some cases, such disclosure to certain officials could be damaging to the rehabilitative prospects of the youth. Judges must be allowed to exercise their discretion and should not be required to release information.

The Senate report contains proposed amendments that would maintain the age of presumptive adult sentences for certain offences at 16, rather than lower the age to 14. It is important to remember that the age at which a youth can receive an adult sentence has not been changed by this bill. It was 14; it continues to be 14. This amendment deals with the presumption, and not the absolute criminal liability of those 14 and above.

Honourable senators, Bill C-7 is a balanced package. It is important to understand the range of measures in context. The vast majority of Canadians want violent crime to be taken seriously. This bill is premised on concepts of proportionality. The seriousness of the response must be guided by and not greater than the seriousness of the offence.

The effect of the presumption is to signal that whenever a youth 14 and over is charged with one of the most serious violent offences, the possibility of an adult sentence is on the table. Young people, in my experience, need to know this.

The most serious violent offenders frequently know just what the courts can do to them. I believe this can act as a deterrent. It does not mean that an adult sentence will ultimately be applied. As we have seen, interestingly enough, with the presumption of adult penalties for 16- and 17-year-olds introduced a few years ago, the number of youth receiving adult sentences did not increase.

Nothing undermines confidence in the Young Offenders Act more than the perception that youth will not be held fairly accountable for the most serious crimes. This bill is strong enough to deal with these serious offences. It avoids automatic adult sentences and allows sentencing determinations to be based on clear principles of fairness and proportionality. The presumption sends a clear signal that the most serious crimes will be treated seriously, without binding the discretion of those in the system to arrive at a fair sentence based on the facts in individual cases. Removing the lowering of the age of presumption of adult sentences would, I am afraid, seriously unbalance this carefully crafted bill.

Another proposed amendment to clause 2 would allow the Attorney General to signal that an offence will not be treated as a presumptive offence. While I agree that the Attorney General should have such discretion, section 65 already allows the Attorney General to give notice at any time that an adult sentence would not be sought. Since this type of discretion is already part of the bill, it appears to me that this amendment to clause 2 is both unnecessary and redundant.

A further suggested amendment relates to clause 146, which concerns admissibility of statements made by a young person. The clause sets out the rights of the young person, the information that must be given, and the procedures that must be followed by police in order for a statement to be admissible in evidence at the trial of the young person. Clause 146(6) represents a change to the current law in that it provides for limited judicial discretion to allow statements where there has been a technical breach, but only in cases where the judge is satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection — this is more than adults have — to ensure they are treated fairly and that their rights are protected.

This change responds to concerns that the complexity of the requirements and the current legislation has led to voluntary statements being excluded from the trial for technical rather than substantive reasons.

The Canadian Bar Association and other witnesses who appeared before the House committee reviewing an earlier

version of the bill recommended changes to ensure that the discretion related only to technical irregularities, and also that the enhanced procedural protections for young persons be specifically referenced. That is one of the 167 changes to which I made reference.

In response to these suggestions, Bill C-7 contains wording that ensures that this discretion is limited in this way. The statement may only be admitted where the youth court judge is satisfied that the irregularity is a technical one and that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and that their rights are protected.

• (1530)

In my view, this section not only complies with the Charter but has significant additional protections for youth that go beyond those for adults. For these reasons, I conclude that the suggested amendment should not be supported.

The final suggested amendment would require a Parliamentary review of the act to be conducted three years after the coming into effect of the act and every five years thereafter.

A review after five years is unlikely, honourable senators, to provide an accurate assessment of the operation of the youth justice system under this new legislation. Implementation of such fundamental change requires considerable adjustments at the local and the provincial levels. These adjustments include new programs, policies, procedures, practices and, above all, new attitudes. Although an appropriate period for implementation planning will allow these adjustments to begin, there will be a need for additional time to obtain a true assessment of whether the act is being implemented in a manner consistent with its spirit and objectives.

A key component of any review will be reliable statistical information on the operation of the youth justice system. The statistical information is unlikely to be reliable after only three years because of the time needed for these implementation adjustments. In addition, the Canadian Centre for Justice Statistics will need time to make changes and subsequent adjustments to its data collection processes to ensure high-quality statistical information. Once the appropriate processes are in place, CCJS will not produce statistical reports on the youth justice system until about a year after the information is collected, and it will take at least a few years to begin to see reliable trends in the statistics. Given the considerable amount of resources required to conduct an effective review, it is not advisable to conduct a three-year review.

The Department of Justice will be carefully monitoring the implementation of the legislation and will be pleased to provide updates and participate fully in any reviews that this Senate can conduct at any time. A mandated parliamentary review is not required.

Canadians have waited a long time for improvements to their youth justice system. We have had this bill in this chamber since last June. Bill C-7 will address the major failings of the current system. The proposed amendments will skew the balance of the package. In my view, they serve to confuse, duplicate or undermine provisions while alienating key stakeholders who need to have confidence in this legislation.

There is not a member of this chamber who does not share my concern for children. I hope all honourable senators know that youth crime is, in fact, going down. Two trends, however, are disturbing. Violent crime has shown some increase, and, in addition, girls are beginning to offend in increasing numbers. We must deal with all these kids in an appropriate fashion before their offences become violent. Children today are very knowledgeable, and they quite often know the rules. They also need to know that those rules can be tough, and this is what balance is all about.

Let me end with a story of a young man. I first met him when he was in grade 8 — blond, blue-eyed, tall, a gangly kid — and he pushed the limits. He needed rules and discipline. He also needed help. Except in limited ways, through cadets — and I wish Senator Forrestall was here to hear that — and some teachers, he did not get that discipline.

Honourable senators, he craved it. Most kids thought, frankly, that it was a real punishment to have their desks dragged out of a line and pushed next to mine. They did not like that much, but this young man loved it because he got the attention that he normally did not get.

He tended to be a bully. He began to commit increasingly offensive acts. The youth justice system, the Young Offenders, Act did not kick in. Despite numerous infractions, he was not asked to be accountable for his behaviour. Many months would pass before an infraction had a court date. He was hurting others, but I think it is safe to say that he was hurting as well.

Honourable senators, child guidance officials failed to respond. Mental health services failed him. We all failed. He was placed in custody, but there was little or no counselling, and he appeared to simply learn more harmful behaviours.

One morning, in the early 1990s, I was driving to the Manitoba legislature listening to the news. The young man in question had just been convicted of manslaughter. My first concern was for the victim; my second for this former student of mine whom we had failed so badly.

My last thought was for me. Could I have done more to reach out to this young man? Did I fail him, and how did I fail him? What could I have done differently?

Honourable senators, I do not believe in the “bad seed” theory. I believe children are born with different abilities, and they have different experiences. When those experiences are mostly bad, as

they were for this young man, children turn out badly. If we are to have any success, then early intervention is essential. This is the essence of the change between this bill and earlier ones.

At the same time, if all the early interventions fail, then unacceptable, violent behaviour must be punished. Our kids need our help and guidance. They must also know that we will set limits, and when they cross those limits, there are penalties to pay.

I believe this bill, without the amendments proposed by the committee, has it right.

Some Hon. Senators: Hear, hear!

Senator Kinsella: Honourable senators, would the honourable senator take a question for clarification?

Senator Carstairs: Yes.

Senator Kinsella: The honourable senator correctly drew our attention to the preambular paragraph that speaks to the fact that Canada is party to the International Convention on the Rights of the Child. Is it not true that that action on the part of the Government of Canada was taken as a result of the concurrence of each of the 10 provinces and territories?

Senator Carstairs: Yes, that is true.

Senator Kinsella: It is my understanding that there is indeed a constitutional convention that goes back to the famous labour convention case that says that if the federal authority will enter into international treaties that affect provincial jurisdiction, it will only do so with the agreement or concurrence of the provinces. That principle was important in the early 1980s around the Constitution Act of 1982.

The Province of Quebec, in particular, has had a long tradition of thoroughly studying international instruments prior to giving its consent to Canada becoming party to a convention.

Given that the Government of Quebec is very much aware of the provisions of the Convention on the Rights of the Child, and it is the Government of Quebec that is before the courts because of this bill, there is a very serious question in my mind. Could my honourable friend explicate it from point of view of the Government of Canada?

Senator Carstairs: Honourable senators, the challenge before the courts has nothing to do with the Convention on the Rights of the Child. I am sure the honourable senator is aware of that.

I would suggest that the argument of the Government of Quebec has to do with whether it has jurisdiction in the administration of the justice system for the province. It considers that this bill may be an infringement of its jurisdictional authority.

The Young Offenders Act, in its various forms, the Juvenile Delinquents Act in its forms before that, and this particular act would all argue differently — that the jurisdictional authority for establishing a regime for young offenders or for youth in this nation rests with the federal government.

• (1540)

Senator Kinsella: Is it not true that what the honourable senator says speaks to paragraph 1 of the reference that is being made by the Government of Quebec to the courts? Paragraph 2 speaks precisely to the issue of their understanding and their approach to youth justice, which they find more congruent with the provisions of the International Covenant on the Rights of the Child than that which is envisaged by Bill C-7.

Senator Carstairs: Honourable senators, for a number of years, inside and outside this chamber, I have been laudatory with respect to the way the Government of Quebec has implemented the young offenders legislation. It has been, if one wishes to use the word, on the leading edge of the interpretation, although not perfect by any stretch of the imagination. Those working in youth justice in the province of Quebec would say they do not have it all right either. In my view, they have it more right than any other province.

However, when trying to come up with a scheme that impacts on youth across the nation, you must take into consideration not only the views of one province, but the views of ten provinces and three territories, as the Young Offenders Act, as will this Youth Criminal Justice bill, should it pass, impacted on all the provinces and territories. Therefore, to find the balance between the desires of some who would, quite frankly, like a much harsher system than the one enunciated in this piece of legislation, and the Province of Quebec, is the difficult task for any federal Justice Minister.

That is why it took so long to bring us this bill. That is why it has been crafted the way it has. That is why, I suggest to the honourable senator — and I maintain as I did in my speech — that some of the amendments that have been introduced will, quite frankly, shift that balance, and the acceptance of this legislation throughout the nation will, I think, be in jeopardy.

Hon. Jeremiah S. Grafstein: Honourable senators, I listened carefully to the speech. I would like to make a comment. I really do not want to enter into a debate on this point, but it was clear to every member on the committee that the minister said unequivocally that this bill conforms to and complies with the UN Convention on the Rights of the Child. She said it a number of times, as did her officials. I make that as a comment.

I do not think the debate as to whether or not it is in the preamble is relevant. The relevant standard, as the minister said, that the government adopted was that it would comply fully — and I see Senator Pearson nodding her head — with the

UN Convention on the Rights of the Child. That is the position she took, and some of us disagree with that.

Senator Andreychuk: Honourable senators, the Honourable Senator Carstairs has touched on many topics that go beyond the amendments.

I believe Bill C-7 is not the right approach for children. I tried, in my speech, to respect the government's ability and responsibility to bring in legislation. Given that, what could we do to make the act at least compliant with the obligations and consistent within itself?

I want to speak to the teacher issue, because I feel as strongly as the honourable senator and the teachers across this country do about this issue, although the honourable senator and I have gone on to different positions.

The amendment speaks only to "the judge shall." This is not a discretion for the teachers. It is for the judges. The evidence shall be given, but only if three tests are met. I caution honourable senators that judges will not automatically release the information. It is only the court of record, not review boards or other proceedings. Only the judge shall release such information, if it is necessary, to ensure compliance by the young person with an authorization under section 91 or an order of the youth justice court; in other words, if the teacher needs to know to help the student comply with his order, or to ensure the safety of the staff, students or other persons, or to facilitate the rehabilitation of the young person. I believe that is a very narrow mandatory provision that teachers need, not because they will have the discretion, but because the judge will. The judge will have the opportunity to determine which situations and which teachers. That is important.

I want to ask the honourable senator a fundamental question about something that troubled me in her initial point. I will certainly take this up informally and in private. The honourable senator mentioned corporal punishment. That issue never came up within the confines of the proceedings of the committee; yet it was an issue somewhere else. I will reflect on that before I make any further comment.

Is the honourable senator saying that, because she saw an unwillingness in this chamber to address the convention in the corporal punishment sense, she does not believe that we should comply with it in this bill? If that is the case, I believe so strongly in the need to comply with the convention that I will do whatever she thinks is necessary, whether it is the honourable senator in her personal capacity or as a minister of the Crown, to bring in legislation to take out corporal punishment in the Criminal Code on the basis that it is non-compliant with the international covenant. She has my support.

Senator Carstairs: I thank Senator Andreychuk for her support. Frankly, I always thought I had her support in repealing section 43 of the Criminal Code. If I did not have it before, I am delighted to have it now.

[Senator Carstairs]

She and I never engaged in a conversation about section 43. I certainly did engage in that conversation with a great number of senators on both sides of this chamber. The bill never got to committee, for obvious reasons, because there was no will to move it on to committee.

As to the honourable senator's question, I believe the bill does comply with the convention. I believe the bill does confirm and comply. I happen to like our system. It is true that we ratify conventions, but we make our own laws.

That is the difference. That is the difficulty in ratifying this procedure. Senator Nolin knows that well. In the United States, as Senator Andreychuk knows, once they ratify, it becomes the law of the land. They do not want it to become the law of the land in its entirety. They want to pick and choose, if you will, or not pick and choose anything, as the case may be.

The Minister of Justice has indicated that in her belief this bill confirms and complies with that convention. The preamble states clearly that it is to confirm and comply. I believe it confirms and complies. Obviously, some honourable senators do not believe that is the case. We are entitled to disagree.

Senator Andreychuk: Honourable senators, the Honourable Senator Carstairs said that the government complies with the convention. Thanks and credit are due to Senator Pearson. In 1995, she and I were struggling with amendments to the Young Offenders Act. We raised the international convention then, and Senator Pearson was one of the few forceful voices at the time that were preoccupied with that area. At the time, the government went back — I was going to use the word “scooted” back — to do an assessment, and it came back and said it fully complies.

•(1550)

Both Senator Pearson and I had some trepidation about that transfer section. If I am misstating the position of the honourable senator here, I hope that she will speak for herself.

In any event, let me speak for myself. I said that I would support all the amendments that the government wanted on the understanding that they complied with the convention, and also that there would be a joint review by the House of Commons and the Senate. Surprisingly, all the processes that were pointed out excluded the Senate. We were not part of that process. However, at that time, the government said that the amendments fully complied with the convention. Then the UN committee said that our country was not in compliance.

My concern is that so many young persons who come under this bill are disadvantaged. The same thing is being repeated by the same department — when they say that the bill fully complies with the UN convention. However, we have raised some real doubts as to whether this bill complies. I do not consider myself in the scholarly group, but senators such as Senator Beaudoin, Senator Grafstein, Senator Joyal and many

others were concerned. The witnesses who talked to us were also concerned.

If there is that much doubt about this bill's compliance, will you persist in putting disadvantaged young people before the courts in order to get their rights? Surely that is not the way to establish good law, that people must get their rights through the courts. We are not doing our duty here as legislators if we do not make those kinds of changes.

This is the second time for this type of youth legislation, and, of course, it is very contentious. It is therefore necessary to be absolutely certain, for us as legislators, that what the government says it wants to do will be what will happen. That will be in the best interests of children and our society.

Senator Carstairs: Honourable senator, I think you forget that I, too, was a member of that committee. I participated in that debate and I was very concerned. I must say that I had another motivation. My other motivation was ridding the Criminal Code of section 43. I wanted to have an understanding of what the government meant by its sense of confirming and complying with the International Convention on the Rights of the Child.

With the greatest respect, the senator and I disagree on this issue. I have looked at it very carefully. I do think it confirms and complies.

The government obviously does not believe that section 43 is offside. I happen to think it is. They think it is not, so there we are. The reality is that I can only accept the best advice that I am given. The best advice is that the legislation confirms and complies. On that basis, I am willing to accept the government's judgment here.

I would, however, like to make one statement related to your earlier question. The honourable senator raised the three conditions, and one of them is compliance with youth orders. With the greatest respect, senator, teachers are not judges. They are not lawyers and they are not officers of the court. It is not their responsibility to ensure that a young person complies. That is not their role as a teacher. Frankly, they should not be put in that role so that a judge releases this information to a teacher, and the teacher can then be co-opted to help comply. If the honourable senator is talking about the trust relationship that develops between a child and his or her teacher, then I would suggest that that would be a very dangerous area to enter into.

Senator Andreychuk: On a point of order, the honourable senators said there is something in the bill that should be withdrawn — whether it is permissive or mandatory. It is permissive to the judge, but once he makes the order then the teacher is in the same position, because it is just changing “may” to “shall” with the judge's discretion. If the honourable senator is saying that we should not do that to teachers, then the bill needs to be amended. I will consider over the weekend whether we should have the amendment that the honourable senator is proposing.

Senator Carstairs: I am not proposing any amendment. I am saying that I disagree vehemently with the request put by teachers' organizations. I have to say that I have been offside with teachers' organizations in a number of ways, not the least of which is the fact that they also support, for the most part, corporal punishment of children.

Hon. Wilfred P. Moore: Honourable senators, I have a brief point of clarification. My substantive amendment does not use the word "imprisonment." It does use the word "custody" which is consistent with the balance of this bill, and that is set out clearly in Hansard of December 4 of this year.

Senator Carstairs: Honourable senators, if I in any way indicated that that is not what Senator Moore was after, I apologize. I was specifically referring to section 718.2 of the Criminal Code, which does use the word "imprisonment".

Hon. Pierre Claude Nolin: Honourable senators, there is one amendment that the honourable senator did not mention in her speech, and I want to hear her comment on it. It is amendment number 3 and relates to clause 25 of the bill that essentially deals with legal aid. Amendment number 3 is to delete paragraph 10 of clause 25, which, by the way, is brand new. The old section 25 is a reprint of the identical provision in the Young Offenders Act.

Paragraph 10 of clause 25 gives authority for the claiming of reparation to a province that was ordered by a judge to provide a lawyer to a young offender, who has then decided not to be represented by a lawyer. If the province was ordered by the judge to provide such a lawyer, then under this paragraph the province would have the authority to ask for reimbursement from the parents, or from the young offender.

We have received testimony from various groups that that was contrary to the legal aid principle, and contrary to the interests of the young offender. If the young offender is to be asked by the province — we all have in mind some provinces which would do that without a doubt, but I hope not in my province — they would refuse. Even if the court decides to order such a lawyer to be appointed to defend the offender, they would refuse because they do not want to reimburse the lawyer. That is why we decided to introduce such an amendment.

I am still convinced that this was much more respectful to the interests of the young offender. I do not think the honourable senator mentioned that amendment. What is her point on that?

Senator Carstairs: I will address it, honourable senators. The reality is that legal aid is supervised by the provinces. The provinces of Ontario and Alberta have already put such a regimen in place. They are already enforcing payment for this purpose.

This particular provision of the bill ensures that they cannot do that until after all of the proceedings, including all of the appeal

proceedings, have been dispensed with. Then at least during the processes, there cannot be any fear that, if the charges were to proceed, some parents — hopefully not many — might say, "Well, that is enough. I will have my kid plead guilty."

Surely, that is not the kind of regime we want. If I had my "druthers," I would prefer that no one be allowed to do this. The reality of life in Canada is that not only does justice differ throughout the country in its administration but so too does legal aid. As I say, two provinces already are enforcing these payments.

• (1600)

Senator Nolin: In many jurisdictions, provinces are definitely doing things that neither a federal government nor a federal parliament would like, but that is the nature of our country.

However, the leader's answer is clear: The government is definitely sanctioning the reimbursement scheme, because by not talking about it and maintaining what is already in the Young Offenders Act they can then let the provinces deal with the new act in the way they think they should. I hope for their sake that they are doing that in good faith in Alberta and Ontario, but definitely not in Quebec, nor in Manitoba.

Why do we open the door to sanction such a scheme of requesting reimbursement for legal aid costs?

Senator Carstairs: Honourable senators, maybe I did not make myself clear: It is happening. What the government wants to do is prevent it from happening at the very beginning of the process. It is all very well to put your head in the sand and say it should not happen. The reality is that it is happening in two of our provinces. As a result of this legislation, that action will be prevented from happening until all of the appeals procedures are over.

Hon. Douglas Roche: Honourable senators, I should like to appeal to the minister for some clarification, if I may. I am doing my best to follow this debate, but I need some help. This debate is about the adoption of the tenth report of the committee concerned. I have the tenth report in my hand and it is full of amendments to the bill, which the minister has spoken against.

Is it correct, then, that there will be a vote on each of these amendments on the way to the final vote for the adoption of the report? At some stage, I feel that I will be called upon, with other honourable senators, to vote on a specific amendment. One needs to have followed this thing extremely closely in the committee to understand what the amendment is about as it is written in the report.

Can the minister provide a list of amendments, along with a notation of what the amendment would do if it were passed? As well, any clarification that the leader could give on the voting procedures would be helpful.

Senator Carstairs: I will try and clarify the voting procedure. We are voting on a report. We can either accept or reject that report. I am recommending that honourable senators reject the report, as opposed to other senators who are, of course, recommending that we accept it. If we accept the report, then all of the amendments will be included in the third reading. In other words, they would be treated as if they existed as part of the legislation. If the report is defeated, which is what I am recommending, we then move on to third reading of the bill, at which point any senator who wishes to introduce an individual amendment could do so.

I hope that is not as clear as mud.

An Hon. Senator: It is clear.

Senator Nolin: It was clear, but that was not the question.

Senator Roche: Honourable senators, let me try that again.

From what the Honourable Senator Carstairs has said, I take it that there would be a vote on the report. Senator Carstairs tells us that she intends to vote against that report. If the report is defeated, then the report will not exist.

Senator Carstairs: That is right.

Senator Roche: In deciding how I will vote on the report, since I cannot vote on each of these amendments at this particular stage, I am still lacking in my own mind a notation of what each of these amendments in the report purports to do, so that I can come to a judgment as to whether I will support it or not. I might be in favour of some amendments and against others. However, because I will only have one vote on the report, I have to weigh the amendments, and therefore, I need some material that will help me to do that.

Senator Carstairs: I do not think it would be fair for me to give the Honourable Senator Roche such a notation. I think the only thing I could recommend is that each senator who moved a motion has, in fact, spoken to that motion. At least, I think so. I certainly responded to their speeches in my speech, and then to the last amendment in the question to Senator Nolin.

Honourable senators, I anticipate — and I should never anticipate, since it is not a good thing to do — that if the report were defeated, individual senators in this chamber will then make individual amendments. At that point, the honourable senator can decide on the merit of that individual amendment. That is part of the reason I urge you to vote against the report, because I have to tell you, I can see no consistency in the amendments that came forward. I thought some of them tried to make the bill more liberal, and some of them, I thought, were ultra-conservative. I could not find a balance and a theme for the overall report.

Hon. Marcel Prud'homme: Honourable senators, coming from the House of Commons as I do, in my view one cannot have too many amendments on third reading. I know we have different rules here, about which I am pleased to inform the new

senators, because I, too, am a new senator on this matter today. I learned that it is not the same as in the House of Commons. In the House, you can only delay for six months, or return the bill to the committee with instructions to look into the clauses.

The leader has said that we might amend the bill at third reading. If we were to vote against the report then we would go to third reading, and in third reading there will be an amendment or amendments. One of them could therefore be, as in the House of Commons, that this house returns the bill to the committee with instructions to revise the following articles. I want to be clear that that would be acceptable.

Senator Carstairs: It would not be acceptable to me, honourable senators, but it certainly may be acceptable to the Senate.

Yes, of course, third reading is quite different in the Senate of Canada than in the other place. A voice motion may be moved, or a return to a committee motion, or the same amendments in the report could be moved again, but individually, as opposed to grouping them.

The Hon the Speaker *pro tempore*: Is the house ready for the question?

Senator Kinsella: Honourable senators, I rise on a point of order. The questions and answers that have just been exchanged lead me to ask for a clarification. Rule 97(5) speaks to a committee's report with amendments. It reads:

When the report recommends amendments to a bill, or makes proposals that require implementation by the Senate, consideration of the report shall not be moved unless notice has been given...

Senator Roche asked whether the motion before us could not be properly divided. It is not at all uncommon in parliamentary practice to divide questions, even if the matter is before us right now. This is an ordinary motion. The motion is to adopt the report of the committee, but because there are many parts to the committee's report, and some number of amendments, the practical problem correctly raised by Senator Roche is that he may be inclined to support certain ones but not others. That is precisely why I think that in parliamentary practice the principle or the practice of dividing questions is vague.

Therefore, my question to the house on this point of order is: Is it not in order that this question could be divided?

•(1610)

Senator Carstairs: Honourable senators, I am not sure that the honourable senator has raised a point of order, but he is correct that the rules do allow for a report to be divided.

Senator Kinsella: With concurrence, and on that understanding, I wish to move that only amendment no. 1 in the report be voted upon in order that those who wish to support it can do so and those who wish to oppose it can do so.

The Hon the Speaker *pro tempore*: I thank Honourable Senator Kinsella. However, the question before us is for the adoption of the report.

Is leave granted to divide the report, as Senator Kinsella is requesting? Leave of the house is required to divide the report because we have before us a motion for the adoption of the report. Is leave granted?

Some Hon. Senators: No.

The Hon the Speaker *pro tempore*: Is the house ready for the question?

It was moved by the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, that this report be adopted.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon the Speaker *pro tempore*: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon the Speaker *pro tempore*: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon the Speaker *pro tempore*: In my opinion, the "nays" have it.

And two honourable senators having risen:

Hon. Terry Stratton: Honourable senators, I request that we defer the vote to Friday next.

Hon. Bill Rompkey: Honourable senators, I wish to defer the vote until Monday next and, with leave of the chamber, I ask that it be deferred to 9 p.m. with a 15-minute bell.

The Hon the Speaker *pro tempore*: Is it agreed, honourable senators, that the vote be deferred until Monday next at 9 p.m., with a 15-minute bell?

Hon. Senators: Agreed.

Motion agreed to.

AERONAUTICS ACT

BILL TO AMEND—FIRST READING

The Hon the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-44, to amend the Aeronautics Act.

Bill read first time.

The Hon the Speaker *pro tempore*: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons returning Bill C-24, to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other acts, and acquainting the Senate that they have passed this bill without amendment.

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Hon. Senator Robichaud, P.C., seconded by the Hon. Senator Ferretti Barth, for the third reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other Acts.

The Hon. Raymond C. Setlakwe: Honourable senators, I am happy to address my comments at third reading of Bill C-31, to amend the Export Development Act.

This bill is the result of a legislative review called for in 1993. This review began in 1998, and it is only now, with the bill about to be adopted, that this exercise is coming to an end.

Canada has long been a trading nation. If we take into account our population, we are the most prolific merchants in the industrialized world. Our prosperity depends, in large part, on our success in foreign markets. We are lucky to have a business sector and workforce that have adapted quickly and effectively to the new requirements of these markets.

[*English*]

As the legislative review made abundantly clear, the EDC is a key player in responding to these demands. The business that the EDC supports accounts for approximately 4 per cent of our gross domestic support. This is a remarkable role for a single firm. When we propose to alter the laws that govern its operations, we should remember that it is not only the EDC that will feel the effects of these actions, but also the thousands of Canadian firms that are enabled to take their industry to the world through EDC. It is this broader community of interests that is at stake.

I will confine my remarks to a few salient issues that have been raised concerning this bill, particularly those issues that honourable senators discussed during the review of the bill in committee.

The bill's critics have alleged that the discretion given to the EDC's board to implement the environmental obligation means that the EDC will simply ignore the obligation when it suits their convenience. They also allege that there will be no public or political accountability for the EDC either in developing its environmental directive or in taking decisions under it.

Let me be very clear on this point. This bill creates a binding legal obligation on the board of the EDC. It will have the effect of law; it will be the law.

•(1620)

At this point, I should like to refer to a question that Senator Angus put to Ms Adams during the committee hearings. Senator Angus said:

You have a lot of items on your ship lift. Basically your main focus is the environment in other countries and human rights, is that right? I do not think you challenge the EDC generally. Do you think there is a good reason to have an EDC in Canada?

Ms Adams: No, I do challenge that. I do not think that there is a legitimate public policy purpose for EDC to exist.

I think that speaks for itself.

[Translation]

Honourable senators, some of you have already commented that Bill C-31 would remove the EDC's environmental directive from the requirements of the Statutory Instruments Act. This legislation establishes an obligation for the legislative examination and prior publication of government regulations. Most of these follow this procedure, although there are exemptions in certain cases. In this case, exemption is required because of the objective served by the EDC's environmental directive and the area in which that directive will apply. This is not a national regulation. It does not, in fact, apply to other projects carried out in Canada. Its application is exclusively extra-territorial. This gives rise to the first question. The directive will be in effect in more than 150 countries in which the Corporation carries out activities. Generally, countries tend to avoid extra-territorial application of their legislation, unless special bilateral agreements have been signed. By exempting this directive from the requirements of the Statutory Instruments Act, the government is in line with general foreign policy practice.

[English]

This is clearly not an unfettered discretion. Nor is this work going on behind closed doors. EDC has undertaken one of the most vigorous public consultation programs of any public agency in Canada. It has gone out proactively to hundreds of organizations, individuals and businesses for input on its environmental and disclosure policies. It has conducted consultations across Canada and employed leading consulting firms to assist with the process. It has published the results of these consultations for further public reflection and input.

These are not ad hoc measures. On the contrary, public consultation has become the foundation for changing EDC's policies. It has helped it to develop one of the most comprehensive disclosure policies of any export credit agency in the world. In due course, EDC's new policies will be published in their final form.

Two years thereafter, the Auditor General will conduct a second audit of EDC's revised environmental directive at the direct request of the Minister of International Trade. The report of that audit will be made public and tabled in the House of Commons and in this chamber and open for all to see. The government is confident that the Auditor General's ongoing oversight will ensure both excellence in the directive's design and diligence in its implementation.

Canada is not alone in taking this approach. I want to stress clearly that not one of the 30 OECD nations uses a domestic deregulation for the environmental review of export credits. It has been government policy for over 10 years that Canada's approach to this issue should match that of our international competitors. Exempting the directive from the requirements of the Statutory Instruments Act also respects this policy.

I mentioned that EDC's environmental directive could be applied in over 150 countries. Environmental assessment science is developing rapidly, as are the legal requirements for it in different countries. In addition, the environmental policies of other international institutions are also changing rapidly. This is a highly dynamic field. EDC will have to keep pace with these developments and needs the ability to modify its procedures and standards quickly. I would challenge the critics to identify a single Canadian regulation that meets such broad demands. Exempting the directive from the act will permit its rapid adjustment to changing competitive and technical circumstances.

Finally, the exemption from the Statutory Instruments Act in no way removes Parliament's authority to examine the directive. As I have already noted, the Minister of International Trade has asked the Auditor General, an officer of the House of Commons, to conduct another environmental audit in two years, and present her findings to Parliament. It is fully within our powers to review those findings, to call witnesses and to make whatever recommendations we wish.

[Translation]

Honourable senators, when we looked at Bill C-31 in committee, some of you said that one provision in the act criminalized freedom of expression, by stipulating that use of the corporation's acronym without written authorization constitutes a criminal offence. I find that a bit far-fetched. The standard rules of legal interpretation lead us to read the text of a law in light of the objective and context of that law. The provision in question is clearly intended to prevent misuse of the corporation's name for commercial purposes, and is similar to a provision in the Business Development Bank of Canada Act, one that has moreover been reinforced in a recent amendment to that act, I might add.

[English]

This provision has been in force for the Business Development Bank since 1995, and there is absolutely no evidence of its abuse. There are analogous provisions in other federal statutes to prevent improper uses of the names of banks and insurance companies. As a criminal provision its enforcement would lie with the Attorney General of Canada. To suggest that the Attorney General would use this clause to muzzle EDC's critics is simply absurd.

It was also suggested that if the provision's intent is benign, it should be amended to clarify this. With respect, the phrase is well designed as it stands. The generality of its reference to business purposes is necessary to cover the broad range of transactions in which EDC engages. These include loans, various forms of insurance, financial guarantees, bid and performance bonds, but would also include such things as the issuance of letters of interest. Hence, the need for the general formulation that we find in this clause.

[Translation]

Honourable senators, in Bill C-31, the government has included some very considered provisions to promote improvement of the operation of the Export Development Corporation. It is a great friend of Canadian exports. I urge you to support its passage.

Motion agreed to and bill read third time and passed.

[English]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (amendments to the Rules—Senators indicted and subject to judicial proceedings) presented in the Senate on December 5, 2001.—(*Honourable Senator Austin, P.C.*).

[Senator Setlakwe]

Leave having been given to proceed to Reports of Committees No. 10:

Hon. Jack Austin moved the adoption of the report.

He said: Honourable senators, I believe this report constitutes some of the most serious work and consideration that the Standing Committee on Rules, Procedures and the Rights of Parliament has conducted in the last several years. The issue here is a code of conduct in a specific circumstance. That circumstance is the unfortunate event when a senator may be indicted in regard to the alleged commission of a criminal offence.

● (1630)

The indictment indicates that this is a serious offence under the Criminal Code. We are not dealing here with situations where a senator may be charged with an offence that leads to summary conviction but only to circumstances with regard to indictment.

Honourable senators are aware of events that have transpired in the past, and the committee itself has met many times to seek a balance between the fairness of treatment of individual senators and our requirement to protect and defend the dignity of Parliament.

In summary, our report says the following: At the point where a senator is indicted, that senator will be given a leave of absence under the rules with respect to attendance in committees and in the chamber itself. The purpose of that leave of absence is to protect the dignity of Parliament because no person should be seen to be making the laws of Canada while under indictment.

No implication is to be given to the fact that the rule requires a leave of absence. The presumption of innocence stands, and the Senate reflects not in any way with respect to the charge. It is solely for the purpose of the dignity of Parliament that we ask for the leave of absence.

Honourable senators are aware that, in general, senators have two principal capacities. One is the role as legislators. The other is their representative capacity; that is, the responsibility to represent our regions and the interests of the people in our regions, as well as our responsibility for minorities and other public interests that we have the right to designate as important to our agendas as senators. It is only in the legislative capacity that the senator is given a leave of absence. The senator, in the case of an indictment, will continue in the representative capacity and will continue to have the full services of his or her offices, as does every other senator.

This leave of absence will continue for as long as there is no conviction in the judicial process that affects the senator. Should there be a termination of the judicial process without conviction, then the senator is automatically restored to full rights of participation in their legislative role.

In the event of a conviction, the presumption of innocence is gone. In those circumstances, it is without any doubt desirable to preserve the status of the convicted individual as a senator until the full judicial process has expired. We have seen cases where there have been convictions and those convictions have been set aside, appeals fully allowed. It would be prejudicial in the extreme to affect that particular status until the entire judicial process is concluded.

However, upon conviction, as I have said, the presumption of innocence is lost. We now have a convicted felon in the Senate, and the measure we are recommending is that the representative role of the senator be unfunded by the Senate — in other words, suspended without pay. That puts the senator in a position where, on legal advice — and the committee has seen the same for other holders of public office, people who are school trustees, hospital trustees or senior public servants — the rule is generally suspension without pay.

However, if the conviction is set aside, the senator is returned to the full role of a senator and the pay part of the compensation package is restored in full, without interest and without the legal requirement to moderate the cost. There is no way to restore the service package which would have allowed the representative role.

That, in summary, is the report of the committee. I want to emphasize again that we spent many hours, in many meetings. Our debates were aggressive in examining both the entitlements of the individuals who make up the membership of this chamber as well as the requirements of protecting the dignity of Parliament. I commend this report to honourable senators.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I should like to ask Senator Austin a few questions, if he is prepared to answer them.

[English]

Senator Austin: Yes.

Senator Nolin: First, the honourable senator talked about the leave of absence. I understand that in the committee report there is also a procedure by which a senator can ask for a leave of absence. Can he give us an example, apart from the judicial consequence for a senator?

Senator Austin: Honourable senators, because the proposed rules are based on attendance, in drafting the rules, it became clear that we would have a rule that created exceptions to attendance. Under the Parliament of Canada Act, we have, as exceptions, a senator absent on government business, a senator absent on public business, and a senator absent for 21 days but fully paid for those 21 days. Thereafter, the senator would not be paid and the deduction of \$250 would take place.

However, we have left open the possibility under the rules that the Senate at a future time might be willing to listen to a motion by any senator asking for a more extended absence from the chamber for some reason, which would be seen by the chamber at that time as fitting. In the committee, there were some examples given. An honourable senator might be asked to teach a course at an eminent university, which would be by definition any Canadian university. They might ask for leave for a fall term to teach a course on government. That is one possibility. There are so many hypotheses. I would leave that example as a possible basis.

I cannot predict what the Senate would set as its criteria in the future, but I would imagine that it would set something seen as a service to the Senate and not to one's personal interest, as in the example of "I need to go away for a year to work at a job to make some additional money so I can keep my \$4,000 net worth interest."

Senator Nolin: Regarding the various possibilities dealing with the a senator who has been charged, I understand that after an acquittal, the senator keeps his or her allowance even though the acquittal arrives at the first appeal level.

Senator Austin: That is correct.

Senator Nolin: As soon as there is a conviction, the allowance stops. Is that right?

Senator Austin: That is correct.

The Hon. the Speaker *pro tempore*: Is the house ready for the question?

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I would like to have spoken to this matter had the debate continued. All senators are aware that I am a member of no committees, but as a non-member of this committee I have certainly been one of its most regular attendees.

•(1640)

Senator Carstairs knows I am tough and intransigent. I absolutely agreed with Senator Carstairs who, in her integrity, considered a fine of only \$250 after 21 days totally nonsensical.

[English]

In that, I was in total agreement with her. Now we have added our salary, and we still have a \$250 fine. That means, for those senators who are fast in calculation, if we sit 60 days a year, we subtract 21 days we are allowed, and then we say, "I owe \$250, multiplied by 10; that is \$2,500; or by 20, that is \$5,000; or by 40 days. If I do not show up for 40 days, I am still allowed over \$60,000 or \$70,000."

I am not the type of person who would ever accept such a ruling, but we have not changed it. We will have to change it. Senator Carstairs was the one who influenced me the most on that point. I sure she will not contradict me, if I remember well. I do not want to quote her unfairly, but we had a very rough discussion on this issue.

As for the question, I am now making a speech, and this is not what I want. My question is: Give us more. Give us a little bit more.

Yesterday, I attended the meeting and we were given an example. The meeting was *in camera*, so it was only members who were there, and I resent that very much. I cannot say to others what the question was that I had, and what was said, but he touched on the subject gently by saying "a leave of absence." I am worried about that.

The Senate gave a leave of absence of two years to someone who was mentioned yesterday. Someone goes to another pasture, not for personal gain, but what happens to that seat in the meantime? A province will be lacking a member for two years because, two years later, that member who was given the leave of absence for extraordinary reasons will come back and say, "Now I will take my seat. Step aside, baby, I am back." These things ask for reflection.

To be positive, I wanted something of that kind to take place. I think now we are better than the House of Commons. At least, everybody knows we are much better than the House of Commons. We are way ahead of them. Now everybody will know we have a good report. What is the urgency now to have it without everybody really understanding what the report is all about? I think we can sit on it and reflect, and then come back and say, "Now we are satisfied."

Some members who want to leave can leave. We are paid to work, so I do my best.

I would like you to give me more examples of this type of leave of absence. That is of great concern. Why are we still stuck with \$250? Is it because it is too difficult to change it? If I had been a member of the committee, I would have put the amendment, as we have tried in the past, so that members will perhaps be more attentive to their duties.

It is always the same people who are around here. Look around. You will see that it is always the same people who carry the burden for some who are not as attentive to their duties. I will not name names, because that is ungracious and unparliamentary, and certainly not our habit in the Senate.

Give us more examples so that I can reflect, and we will see what we will do when the bill is called.

Senator Austin: Honourable senators, Senator Prud'homme has been very diligent in attending the meeting of the committee
[Senator Prud'homme]

that concluded this report. He participated in the discussion in that committee on several occasions. I saw two questions in his remarks.

With respect to the \$250, that was the amount in the previous rule. We have simply restored it because there were changes made by the last amendments to the Parliament of Canada Act on salaries and expenditures, which had the effect of reducing that amount.

With respect to other hypothetical circumstances, I did present another hypothesis in the committee. I spoke about a situation where the Government of Canada might want to appoint a senator to a short-term diplomatic office because of the skills of that particular senator, which would serve the Government of Canada well for a period of time. I mentioned Senator Frith as an example.

Of course, there is no question here of doubling up on pay or compensation or any financial benefit. There would only be one financial package. I said that might be something the Senate might consider at a future time. However, the Senate might not wish to give its consent, for good and sufficient reasons. Senator Prud'homme has given one reason, and that is that the absence of the senator from participation in the business of the Senate on behalf of his or her region removes one component in a very serious part of the governance of Canada.

We could debate the hypothesis. All we are doing is creating an enabling capacity. It will be for the Senate, at a future time, to decide whether anyone who applies has provided sufficient public policy justification to have the Senate act in a direct way.

With respect to the final question, the urgency of the matter, I have said in my remarks to begin with that this matter has gone on for a very long time in the committee. I say this indiscreetly, but as the honourable senator is not a member of any caucus, I can tell him that it has had a lot of caucus discussion over a very long period of time. I believe that your colleagues in the chamber, at least, have had a great deal of time and exposure to these issues. Your concern that they may not yet be adequately prepared to act on this matter, I believe, is not one that is correct.

Senator Prud'homme: When our gracious Queen, the Queen of Canada, commanded me to come to the Senate — as I was reminded of yesterday — she ordered me to put aside all my activities to concentrate whatever I had to offer to Canada to the activities of the Senate. I am still trying to reconcile this command of our gracious Queen, because that is the theme. Would the honourable senator kindly answer me?

The Hon. the Speaker *pro tempore*: Honourable Senator Prud'homme, I am sorry, but the time for questions has expired.

Is the house ready for the question?

On motion of Senator Nolin, debate adjourned.

YUKON BILL

SECOND READING—DEBATE ADJOURNED

Hon. Ione Christensen moved the second reading of Bill C-39, to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts.

She said: Honourable senators, the hour is late and I ask for your indulgence to make a rather comprehensive presentation on an important piece of legislation to a very special part of Canada: Bill C-39, the Yukon bill.

● (1650)

As someone whose working life has revolved around the developing North, this is a very proud moment for me. It is a pleasure to introduce to the Senate legislation that will be yet another step in bringing responsible government to Yukoners. After years of hard work and dogged determination, the government and the people of the Yukon have concluded a fair deal with the federal government that will see northerners take over responsibility for land and resource management.

This legislation has been 22 years in the making. Among other things, it gives legal legitimacy to the letter of instruction given to the commissioner by the Minister of Indian Affairs and Northern Development back in 1979. This legislation also provides for the implementation of the long-negotiated Devolution Transfer Agreement, the DTA, which transfers the management and administration of Yukon lands, resources and water from the Northern Affairs Program of DIAND to the Yukon government.

Honourable senators, while Bill C-39 is not a constitutional change, it represents a major milestone in northern development, indeed in Canada's development, and a great step forward for the government and the people of the Yukon.

Let me take a few moments to share with honourable senators just how far we have come. When the Yukon was established as a territory in 1898, the government of the new territory was comprised of a commissioner and an appointed advisory executive council reporting to the minister of the interior. That was quickly changed to four elected council members, but the territorial administration continued under the direction of the commissioner until 1979. It will only be with this legislation that those changes will be set into law. However, the devolution of administrative responsibilities has been ongoing.

By the mid-1960s, the Yukon government administered schools, public works, welfare and other local matters. During the 1960s and 1970s, the elected members continued to gain

responsible power. In 1979, the commissioner was instructed to follow the advice of the elected council consistent with the principles and the operation of representative and responsible government.

The process of transferring responsible government to territorial governments continued. By 1987, responsibility for the Northern Canada Power Commission was transferred to the Yukon government.

In September of 1988, a memorandum of understanding on devolution was signed between the Minister of Indian and Northern Affairs and the Yukon government leader setting out the commitment to facilitate the transfer of remaining provincial-type responsibilities to the Yukon government.

Over the years, there have been additional transfers of power to the Yukon, including freshwater fisheries and mine safety in 1989, inter-territorial roads in 1990, Yukon's portion of the Alaska Highway in 1992, hospitals in 1993, community health in 1997, and oil and gas in 1998. The major outstanding function to be transferred is that addressed in this initiative: land and resource management.

Honourable senators will know that under our Constitution the functions and powers pertaining to the administration and control of lands and resources and their titles rests with the provincial governments. In the North, however, the federal government has been performing these functions pursuant to a number of acts, in all three territories of Canada, through the Northern Affairs Program of the Department of Indian and Northern Affairs.

Since the mid-1970s, the Yukon government has received administration and control of a limited number of blocks of land to establish a network of communities and municipalities in the Yukon. These transfers of land were achieved through the issuance of Orders in Council under the authority of the Territorial Lands Act. They did not encompass powers over the subsurface rights. What is being proposed in this bill is to transfer the administration and control of land, water and resources to the Yukon government. Although ownership will remain with the federal government, the Yukon government will be able to exercise decision-making powers over those lands, waters and resources for all practical purposes as if it were the owner.

Honourable senators, while these changes reflect the maturity of the Yukon government, they also respond to the aspirations of Yukoners to build a modern, dynamic economy. As Premier Duncan told the standing committee in the other place, the transfer of oil and gas responsibilities has been an important catalyst for economic development in the Yukon. The impact of the changes being proposed in this initiative will be even more far-reaching and dramatic.

The provisions of the Canada-Yukon Oil and Gas Accord Implementation Act provide a net fiscal benefit to the Yukon in respect of reserves of oil and gas development in the territory. Premier Duncan indicated to the standing committee her government's firm resolve to utilize these new powers to reduce its dependence on federal funding over time as a result of its increased capacity to manage the resources that drive the local economy. Self-sufficiency and self-determination are precisely what northerners have been working toward for as long as I can remember.

Honourable senators, what makes Bill C-39 so significant is that, with the administration and control of these critical areas of jurisdiction, the Yukon government will have received almost all the provincial-like powers it has long sought.

The new authorities over land and resource management are embodied in the Development Transfer Agreement and are reflected in the new Yukon bill. The DTA sets out the terms and conditions for the transfer of these comprehensive new powers.

The process that brought us to this stage has been, like all the history of devolution in the territory, a long and challenging experience. It all began with the initial federal proposal launched by then Minister of DIAND, Ron Irwin. That proposal was put out for public consultation five years ago.

Following those preliminary consultations, in January 1997 the federal government presented a devolution proposal to transfer the control and management of the lands and natural resources responsibilities to the Yukon. The comprehensive proposal included adequate and appropriate measures to protect the interests of Yukon First Nations.

In June of that year, the Yukon territorial government and the Council of Yukon First Nations conditionally accepted the proposal. However, they raised a number of issues that they wanted addressed before proceeding. Consequently, the federal, territorial and First Nations negotiation teams began to work to clarify and address these issues.

A major breakthrough came in September of 1998 with the signing of the Yukon Devolution Protocol Accord to secure a multi-party agreement on a framework that would permit both First Nation land claims negotiations and the devolution negotiation process to move forward separately but simultaneously.

Within less than six months, in February 1999, the Government of Canada, the Government of Yukon and First Nation negotiators reached a set of understandings on key issues. That was followed by multi-party negotiations to negotiate the final Devolution Transfer Agreement and to develop draft legislative powers to give effect to that agreement.

[Senator Christensen]

Later in 1999, the Yukon government conducted public consultations on possible improvements to the Yukon Act. Following these consultations, the Yukon government proposed a number of amendments to the act. Soon after, drafting of the proposed Yukon act by the Department of Justice began. Various drafts of the bill were shared with the Yukon government and First Nations who carefully and thoroughly reviewed each draft of the bill and provided significant comments on all aspects of the legislation.

●(1700)

The draft bill was also shared with the Gwich'in Tribal Council and the Inuvialuit Regional Council of the Northwest Territories, as both organizations have signed land claims and treaty rights in the Yukon. This fall, the Yukon government and the Council of Yukon First Nations gave their endorsement of the Devolution Transfer Agreement and the bill, confirming that their needs had been considered and adequately met.

Honourable senators, Bill C-39 captures and reflects the concerns of all Yukoners and has won support of parliamentarians representing all parties.

The Devolution Transfer Agreement given effect in part by this bill provides a good package for the Yukon government, the First Nations and Yukon people — indeed, all Canadians. It is a wide-ranging comprehensive document that, in seven chapters and 200 pages, covers all aspects of the devolution responsibilities. It transfers not only the management of lands, minerals, water and programs but also the financial resources the Yukon government requires to meet the needs of its citizens. It is a fair deal for Yukoners, from many points of view.

First, let us look at the financial elements that are fundamental to exercising the new powers and responsibilities being turned over to the Yukon. The Yukon government will receive approximately \$35 million annually on an ongoing basis. This represents DIAND's current A-based operating budget for the programs being transferred.

In addition, the Yukon government will keep the first \$3 million raised from resource revenues without impact on the territory's formula financing grant. Any excess resource revenues will then reduce the formula financing grant dollar for dollar. This would ensure that the Yukon receives a fiscal benefit from the development of lands, water, forests and mining resources. This arrangement will be reviewed five years after the devolution date. However, it must be noted that this \$3 million is in addition to the provisions of the Canada-Yukon Oil and Gas Implementation Act, which provides a net fiscal benefit to the Yukon from oil and gas developments in the territory. The Yukon government will also receive approximately \$27 million in transition and one-time funding over a number of years to cover transfer-related costs.

The Yukon government will take ownership of all Yukon-based equipment such as computers, furniture, vehicles, fire suppression equipment and field testing equipment owned and used by the current Northern Affairs Program, the NAP. All buildings, office or otherwise, owned and used by the NAP will be transferred to the Yukon government. Staff houses that are not purchased by NAP employees will be transferred to the Yukon government at no cost. Space in federal government buildings occupied by the NAP in the Yukon will be leased to the Yukon government at market rates, and existing third-party leases and contract agreements held by the NAP will be assigned to the Yukon government.

Honourable senators, due to the importance of forestry to Yukoners, the DTA contains a chapter devoted to the forestry sector and fire suppression costs. Under the DTA, the Government of Canada and the Yukon government will share extraordinary forest fire suppression costs for a five-year period. Canada's share of the cost will be 80 per cent in the first year of devolution and will decrease by 10 per cent each year to 40 per cent in the fifth year following the transfer. In addition, the federal government will share fire suppression costs for a five-year period and provide an additional \$7.5 million toward a special fund for future years.

As well, the Yukon government can, through its formula financing agreement, seek additional federal assistance in the event of extraordinary circumstances beyond the Yukon government's fiscal means to control. Those who are used to boreal forests will know that forest fire suppression can be a very expensive situation.

Protecting the fragile environment of the Yukon region has been given careful consideration in the Devolution Transfer Agreement. There are several provisions in the DTA designed specifically to address environmental concerns. The federal government will retain financial responsibility for remediating hazards to human health and the environment, created prior to devolution, of known or any newly discovered abandoned hazardous or contaminated waste sites in the Yukon. The department has set aside \$20 million, \$2 million a year over 10 years, for this purpose.

With respect to mines and other major projects, the underlying principle of polluter pays is upheld in the Devolution Transfer Agreement. However, in the event of abandonment of hazardous sites, the agreement sets out a process to address remediation or emergency actions that may be required for major mine sites where Canada may have had some responsibility for its share of the environmental remediation cost — if and when these are abandoned by their owners.

The underlying principle, honourable senators, is that Canada will remain responsible for the assessment and remediation of health and safety hazards and hazards to the environment at abandoned sites created while Canada had administration and

control of the lands. The Yukon government will be responsible for remediation of sites caused by activities after the effective date of the transfer.

Many Yukoners are keen to see the construction of an oil and gas pipeline in their territory which would create jobs and encourage economic development throughout the region. However, they are just as committed as other Canadians to ensure a sustainable pipeline project. The National Energy Board will continue to have authority over the issuance of permits establishing terms and conditions for the construction of a pipeline that crosses interprovincial or international boundaries. Assessment of environmental aspects of an interprovincial or international pipeline will continue to be the jurisdiction of the Canadian Environmental Assessment Act. Canada will work with the Yukon government and First Nations in the environmental assessment of a pipeline project.

The powers of the minister responsible for the Northern Pipeline Act to issue water licences or authorize expropriation of land for the purpose of constructing a pipeline in the Yukon, under certain circumstances, have been retained in the bill to protect federal interests. The DTA and the act also contain provisions that authorize the Government of Canada to take back from the Yukon government administration and control of public lands in the national interest — such as for security and defence, as well as for other national purposes — including the welfare of Indians and Inuit as well as to conclude or implement land claims agreements.

Honourable senators, negotiators for this agreement took equal care to look out for the interests of federal employees who will see their jobs changed as a result of devolution. Federal negotiators recognized the significant contribution DIAND employees have made to the development of the Yukon. They were determined to ensure that these employees' skills and knowledge would be available to the territorial government once the devolution takes effect. Under the terms of the agreement, each of the 240 indeterminate federal DIAND employees will receive an offer of indeterminate employment from the Yukon government approximately six months prior to the date of devolution. As there is adequate lead time to complete the transition, both the public service and the general public in the Yukon can be assured of a seamless transition.

The Yukon's job offer will be to a position whose duties and responsibilities match as closely as possible those of the person's federal position. The salary of any federal staff member who accepts a position with the Yukon government will be equal to the employee's base federal salary plus the environmental and cost-of-living components offered under the federal isolation post allowance. There will be no impact on pension entitlements for federal employees who accept the territorial government's offer of employment, as Yukon government employees are members of the Public Service Superannuation Plan.

•(1710)

Several benefits provided by the Yukon government are not available in the federal system. For example, workers who choose to accept a transfer offer will find that anyone who has completed five years of continuous federal service is entitled to an additional five days of long service leave with the Yukon government. The Yukon vacation benefits are also more generous than those in the federal system.

The single most noticeable difference between the two governments is the isolated post allowance. Under the federal system, employees living and working in isolated areas are entitled once a year to airfare for the entire family to the nearest major centre. However, as a territorial government employee, they will be entitled to a lump sum of \$2,042 regardless of whether they travel or not.

Over all, honourable senators, the terms and conditions set out in the agreement meet and, in some cases, exceed the requirements of an Alternative Service Delivery Type 2 Transfer that the federal government negotiated with the federal employee unions. This is a fair deal for affected federal employees.

Honourable senators, this legislation, in clause 27, also fully considers the interests of francophone residents in the area. Bill C-39 preserves the protection of minority language rights in the Yukon. This bill, like the current Yukon Act, ensures that the language rights provided in the Territorial Language Act cannot be diminished without Parliament's concurrence. In addition, the DTA stipulates that the provision of land and resource management services in Canada's two official languages after devolution will be based on criteria similar to that set out under the Official Languages Act. The Yukon government will ensure that territorial legislation related to land and resource management programs will incorporate service standards consistent with the Official Languages Act.

In practical terms, this means that communications and services to the public in both English and French will be provided at the Yukon office that serves the greatest number of people requesting services in the French language, which for now is expected to be the Whitehorse office. In addition, the agreement sets out other conditions under which bilingual services will be provided. Such conditions are generally based on those set out in the regulations under the federal Official Languages Act.

A further reflection of the assurance of minority language rights under the transfer agreement is that French and English are to be given equal prominence in advertising and public notices and that signage at territorial offices provides information and services related to public lands, minerals and water resources to be in both official languages, each being given equal prominence. Should a problem arise, the Yukon government's

Bureau of French Language Services will be mandated to deal with these concerns.

Honourable senators, while all the clauses and subclauses of this bill are extremely important to northerners, perhaps the greatest value of the modernized Yukon act is its impact to Aboriginal and non-Aboriginal relations. It is no secret that there is a long history of tension between First Nations and public governments that has hampered the kind of progress represented in this initiative.

Successive Ministers of Indian Affairs and Northern Development have given priority to the devolution of provincial-type programs and services to the Yukon government because of their conviction that we should strengthen government-to-government relations. The transfer agreement and Bill C-39 have proven them right.

That agreement and this legislation reflect the very careful consideration that has been given to the needs and priorities of First Nations to ensure their rights and interests will be fully protected. A number of provisions are included in the agreement and in the Yukon bill for the protection and implementation of the rights of Aboriginal people.

For example, there are provisions in the agreement stating that the conclusion of outstanding land claims and self-government agreements will be continued as a matter of high priority by the parties. Similarly, other provisions have been included to ensure that the transfer of land and resource management powers will not impede the claims and the self-government negotiations. For example, land protection measures in the DTA set out the steps to be taken by Canada prior to devolution and by the Yukon government after devolution to withdraw selected lands from disposal for the benefit of the conclusion of land claims. These measures include the withdrawal by the Yukon government of 120 per cent of lands remaining to be selected for the claim settlement.

As noted earlier, the agreement and the Yukon bill include provisions to take back the administration of land for the purpose of concluding land claims.

Finally, both the Yukon bill, clause 3, and the DTA include provisions for greater certainty providing that Aboriginal and treaty rights under section 35 of the Constitution Act will not be abrogated or derogated.

On the basis of such provisions and the benefits offered by the transfer to First Nations and Yukoners in general, the Council of Yukon First Nations, in a resolution adopted on October 4, indicated its view that the transfer agreement enhances the provisions of final agreements and self-government agreements and safeguards the rights, titles and interests of those First Nations that have not ratified their claims and self-government agreements.

Honourable senators, I think it is important to note that aside from land claims considerations, Yukon First Nations will be direct beneficiaries of this package. For example, the Yukon government will continue to fight forest fires on settlement lands after the first five years provided for in the Umbrella Final Agreement. Both governments will continue to remediate hazards on settlement lands and have set out a consultation mechanism for carrying out these remediations.

The DTA also sets aside funds to be provided to Yukon First Nations once they have concluded their respective self-government agreements and programs and service transfer agreements.

Perhaps most importantly, the agreement includes commitments by the Yukon government to cooperate with First Nations in the development of successful resource legislation as well as a communication protocol in respect of the Yukon government's policies, procedures and decisions to safeguard First Nation relationships in Yukon.

However, despite these measures, the Tribal Chief of the Kaska Tribal Council has indicated that the council will not support devolution to the territorial government prior to the conclusion of its land claim.

In summary, honourable senators, I want to reiterate what I believe are the most critical aspects of this progressive legislation. First, Bill C-39 enables us to implement the devolution transfer agreement, the very heart of this legislation. This is the primary purpose of the bill. Once it receives the approval of this chamber, the many measures I have outlined today will become law, we hope as early as April 1, 2003, to give time for further progress on settling claims and self-government agreements as well as to ensure the Yukon government has time to prepare for a seamless transition.

The new Yukon act will transfer significant new law-making powers to the Yukon legislature. The devolution of all land and resource management to the Yukon government will give local political leaders decision-making authority over matters fundamental to the well-being of Yukoners. Yukoners will decide if, where and when land and resource development should proceed, and it will be Yukoners who will reap the financial rewards associated with these new responsibilities.

•(1720)

Second, the Yukon bill recognizes the political realities of the North and the dramatic changes that have taken place since the days of 1979 when responsible government in Yukon was first recognized. Bill C-39 will bring the legislative framework into line with what has been common practice for the last two decades: recognizing the existence of responsible government in Yukon and providing its legislature with the capabilities to operate in much the same fashion as provincial legislative assemblies.

Once this bill takes effect, the legislature will sit for up to five years, as is the case elsewhere in Canada. Decisions about everything from the location of the capital city to dissolution of the legislative assembly will be made by locally elected officials in Whitehorse, and not by Ottawa. In most cases, consistent with the principles of responsible government, the commissioner will be required to act only with the consent of the executive council.

The bill also contains provisions to repeal the federal powers of instruction to the commissioner 10 years after the new act is brought into force. While the federal government was prepared to eliminate this provision immediately, its retention for a specific time period is consistent with the request made by the Yukon First Nations and agreed to by the Yukon Government.

The bill also includes powers for the Governor in Council to reserve approval or to disallow Yukon legislation where appropriate. These powers are comparable with the relationship that the federal government has with provincial governments under the Constitution.

Under the bill, the Auditor General of Canada will continue to be the auditor for Yukon. However, the proposed act also contains a number of new provisions that would be brought into force at a later date with the consent of the Governor in Council that would permit the Yukon legislature to appoint its own auditor general. These new provisions, developed in consultation with the Auditor General, would set the framework within which the auditor general of Yukon would carry out its duties and functions in a manner that would preserve the independence of the auditor from the government.

Honourable senators, the third key aspect of Bill C-39 is that it modernizes the legislative framework of Yukon, consistent with current practice. Provisions setting out the powers of the legislature more closely reflect those of provinces under the Constitution Act, 1867. In addition, the bill would rename "Council" to "Legislative Assembly" and the "Commissioner in Council" to the "Legislature of Yukon." The former "ordinances" of Yukon will now be the "laws" of Yukon.

The fourth aspect to keep in focus is the fact that the bill will result in consequential amendments to a large number of federal acts, over 100. These changes reflect the fact that, as a result of the transfer, four federal acts, the Quartz Mining Act, the Placer Mining Act, the Yukon Waters Act and the Yukon Surface Rights Board Act will be repealed. In addition, the Territorial Lands Act, which applies to both the Yukon and the Northwest Territories, will be made non-applicable for Yukon.

A significant number of consequential amendments are made to change the reference of "Yukon Territory" in federal legislation to simply "Yukon" as requested by the Yukon government. All federal legislation that is repealed will be mirrored in Yukon legislation.

Finally, and most significantly, Bill C-39 recognizes that people at the local level are far closer to both the challenges and the solutions, and that their voices must be heard and reflected in legislation affecting their lives and their livelihoods. This legislation places resource management decision-making in the hands of people most knowledgeable about the local conditions and those most affected by the consequences of those decisions — Yukoners. It puts the tools of economic self-sufficiency, as well as the financial resources required to nurture economic development, in the hands of the Yukon government. More than that, it speaks to the confidence of all Canadians in northerners' capacity to manage their own affairs. It reflects the growing recognition and respect across Canada for the maturity of the Yukon government and its ability to oversee these important portfolios.

This legislation publicly acknowledges that the Yukon government has proven its capacity to make responsible decisions in the best interests of territorial residents. It concedes that decisions made in Whitehorse will inevitably be more sensitive and responsive to local needs. Equally important, with increased responsibility comes increased accountability, and it will be local decision-makers who answer to their constituents.

Honourable senators, this legislation represents a new beginning for all Yukoners. Bill C-39 empowers Yukon people to better determine their own destiny and to discover new ways to become greater contributors to Confederation. The new Yukon Act is a major step forward on the path to a stronger and more united country that speaks volumes about Canada's prospects in the 21st century. It is testimony to what we can achieve when we work together in productive partnerships. This bill sends a clear signal that the key to building strong, prosperous communities is to foster local solutions for local challenges.

Honourable senators, not only is this progressive legislation a fair deal for Yukoners, it is a good deal for Canadians. Yukoners are ready to take on these new responsibilities. Our First Nations have set the national standard in land claim processes. The date of implementation of the DTA has been set for 2003 to allow final settlements of all land claims so that we can go forward together, but there may be those who choose not to settle at this time. Where that happens, their future rights are fully protected.

As a Yukoner who has been a part of this process for over 30 years, I encourage my honourable colleagues to review this bill, to hear our witnesses, and to give considered passage to this historic legislation.

On motion of Senator Kinsella, for Senator Cochrane, debate adjourned.

[Senator Christensen]

[Translation]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

STUDY OF DOCUMENT ENTITLED "SANTÉ EN FRANÇAIS— POUR UN MEILLEUR ACCÈS À DES SERVICES DE SANTÉ EN FRANÇAIS"—MOTION ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report on the document entitled *Santé en français — Pour un meilleur accès à des services de santé en français.*—(Honourable Senator Morin).

•(1730)

Hon. Yves Morin: Honourable senators, I wish to support the excellent motion of the Honourable Senator Jean-Robert Gauthier, who wants the report on health care prepared by the advisory committee on minority French-language communities to be reviewed by the Standing Senate Committee on Social Affairs, Science and Technology.

This excellent study was done at the express request of Minister Allan Rock. This illustrates the great interest that our government is taking in the protection of francophone minority rights outside Quebec.

With regard to this report, I would like to point out the excellent work done by Georges Arès, President of the Fédération des communautés francophones et acadienne du Canada, and Hubert Gauthier, Director General of the St. Boniface Hospital, in Manitoba.

Section 41 of Canada's Official Languages Act guarantees to francophone minorities the right to health care services in French. The constitutional right of francophones to health services in their language is currently being debated before the courts. In fact, the Ontario Court of Appeal must render its decision on this issue tomorrow. As Minister Rock recently said, health is an important factor to help French-language communities thrive. As we know, the lack of health services in one's mother tongue seriously jeopardizes the quality of care, particularly in the case of psychosocial problems.

Therefore, the priority given to this issue by French-language communities themselves comes as no surprise. This was illustrated by the forum on health care in French, which was held in Moncton last November and which was attended by over 250 francophone leaders outside Quebec.

This is indeed a very serious situation, as was shown during that forum, since 50 per cent of francophones in Canada do not have access to health care in their own language. According to this excellent report, the solution to this serious problem is threefold: creating modern and efficient front line health services, setting up functional networks and, finally, training qualified francophone staff.

The first element has to do with the creation of primary care. We know that primary care is now recognized as the foundation of effective health care. This care is provided by a multidisciplinary team, French-speaking in this case, which will deliver the complete range of health care and be responsible for a given French-speaking population.

Health Canada has realized the importance of creating French-language primary care and recently decided to set aside an amount of between \$10 million and \$20 million for that purpose. This money will come out of the health transition fund for French-language primary care projects. These grants will be provided in response to requests from the various francophone communities outside Quebec.

In this connection, I wish to pay tribute to the excellent work being done by the Évangéline Community Centre on Prince Edward Island which, through a cooperative effort in their community, is now providing comprehensive care.

When our committee recently visited the maritimes, we had the pleasure of hearing Élise Arsenault, the community centre's director, talk about all facets of this excellent undertaking.

The second element has to do with the creation of functional networks, which will be based on the most recent, most accessible and fastest information technology. We know that a characteristic of French-language communities outside Quebec is their dispersal throughout Canada and the small number of people in many of them.

Accordingly, the creation of virtual groups of care providers for patients requiring information, remote care facilities and properly equipped training centres will resolve the problem of dispersion. Health Canada supports this solution, but sees in it a significant problem of additional resources.

Honourable senators, the final part deals with the training of the francophone clinical staff. This will obviously be associated with local hiring practices and remote location employment practices. Canada has a number of French-language training centres outside Quebec.

I would point specifically to the progress achieved recently by the University of Moncton, which created a faculty of health sciences a few months ago under the competent direction of its new dean, Normand Gionet. I am well aware that the University of Moncton was keen on a French-language faculty of medicine, and the artisans of this project, Dr. Aurèle Schofield, in charge of

postgraduate medical instruction, and Dr. Rodney Ouellet, an internationally renowned cancer researcher, are behind it.

The project is national in scope, will benefit, once completed, all francophones outside Quebec and will help resolve the problem of manpower in large part. I would like to support this project, which, I understand, is still in its infancy.

In conclusion, it is vital to increase health care services in French for francophones outside Quebec. This will obviously be achieved with support from government authorities, if health care facilities are committed and the public is encouraged to participate. Honourable senators, this is what we should hope for.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

•(1740)

ASIAN HERITAGE

MOTION TO DECLARE MAY AS MONTH OF RECOGNITION ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Carney. P.C.:

That May be recognized as Asian Heritage Month, given the important contributions of Asian Canadians to the settlement, growth and development of Canada, the diversity of the Asian community, and its present significance to this country.—(*Honourable Senator Poy*).

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, Senator Cools clearly told me that if Senator Poy wanted to rise to conclude the debate on this motion, she would fully agree.

[*English*]

The Hon. the Speaker *pro tempore*: Honourable senators, I must inform the Senate that if the Honourable Senator Poy speaks now, her speech will close debate on this item.

Hon. Vivienne Poy: Honourable senators, I know it is late in the day. I will take but a few minutes of your time.

First, I should like to thank Senator Carney for seconding the motion to recognize the month of May as Asian Heritage Month. As well, I wish to thank Senators Finestone, Oliver, Kinsella, Taylor and LaPierre for contributing to the debate on this issue.

Throughout Canada's history, Asian Canadians have contributed to Canada's economic, social and cultural development. Senator Carney, a British Columbian, has testified to the present day importance of Asian Canadians to the vitality and dynamism of her province.

Senator Finestone looked at the global impact of Asian culture, stressing that many aspects of Asian culture already permeate our day-to-day lives as global citizens. Senator Finestone also stressed that this motion before the Senate is intended to address the present as well as the future. As she noted, it reflects to the world what Canada is and what it will become.

In the last few weeks, perhaps we have had a sense that the world has grown smaller and less secure. In this environment, the hallmarks of multiculturalism, tolerance and respect for diversity of our many cultures have come under attack in some quarters. I suggest to honourable senators that these values are more important now than ever if we are to emerge from this crisis as a strong and united country.

I agree with Senator Oliver that, like the Black population of Canada, which annually celebrates Black History Month, Asians also come to Canada from many different countries. We know that people from such diverse communities as Somalia, Jamaica, America, Haiti and Ethiopia do come together each year to celebrate Black History Month. Asian Heritage Month would allow Asians to celebrate and share our commonalities while respecting our differences.

I should also like to thank Senator Kinsella, who noted that equality does not mean being the same. It is our very diversity as a nation that gives us strength, but we can only benefit fully from our rich heritage if we respect one another's traditions. As Senator Kinsella emphasized, the proclamation of Asian Heritage Month must be coupled with sufficient resources so that Canadian school children are educated about the contributions Asians have made to this country.

Finally, I wish to thank Senators Taylor and LaPierre, who have added their very personal reflections on the historical contributions of Asians to Canada in the face of discrimination. Senator Taylor mentioned how Japanese, Sikhs and Chinese were involved in the social and economic development of Western Canada, and how they remain an important part of the community to this day. Senator LaPierre expressed his commitment to racial tolerance and its importance to the well-being of our country.

Honourable senators, this motion would formally acknowledge the contributions Asian Canadians have made and continue to make to Canada's growth and development as a multicultural nation. As such, I would ask my honourable colleagues their support.

The Hon. the Speaker *pro tempore*: Is the house ready for the question?

[Senator Poy]

Hon. Senators: Question!

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed

Motion agreed to.

NATIONAL DEFENCE

QUALITY OF FAMILY LIFE IN THE MILITARY—INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cohen calling the attention of the Senate to the quality of life of the military family and how that quality of life is affected by government actions and by Canadian Forces policy.—(*Honourable Senator Atkins*).

Hon. Norman K. Atkins: Honourable senators, it gives me great pleasure to rise at this time to continue the debate on the inquiry set down by our former colleague Senator Erminie Cohen. Few people have passed through this place who cared more for the welfare of their fellow human beings than Senator Cohen. Her work on poverty and as co-chair of the Progressive Conservative Task Force on Poverty brought praise not only for her in relation to its recommendations, but for the Senate as well. The inquiry I wish to speak on today had its beginnings in meetings that Senator Cohen had with the wives and families of CFB Gagetown.

This inquiry calls the attention of the Senate to the quality of life of the military family and how that quality of life is affected by government actions and by Canadian Forces policy.

Senator Cohen's visit to Camp Gagetown in New Brunswick resulted in a report that she authored, entitled "Unsung Heroes: A Quality of Life Perspective on Canada's Military Families." This report, plus the other recent literature on the subject of spouses in the military, such as the House of Commons report entitled "Moving Forward: A Strategic Plan for Quality of Life Improvements in the Canadian Forces" and the government response to this report, form a compendium of advice and warning to government and to the leadership in the Canadian Forces that problems exist and change must come.

I am also familiar with the Muriel McQueen Fergusson Family Violence Research Centre study entitled "Report on the Canadian Forces: Response to Women Abuse in Military Families." The report has prompted the Canadian Forces to adopt an action plan on family violence and abuse that has been widely distributed throughout the Canadian Forces.

Given the length of time that has passed since Senator Cohen first spoke on this issue, I believe it is appropriate to summarize her main points.

Her purpose in commencing the inquiry was to encourage debate both among senators and the Canadian population at large on ways to improve the living conditions of Canada's military families and, in so doing, to celebrate their contribution to both Canadian and military life.

Military life is characterized by the fact that few, if any, members of the Canadian Forces have any degree of control over their own lives, the type of control we take for granted. For example, the military tells its people where they will live, for how long, and often dictates the type of housing. Family separation for a long period is the norm, especially now that we are in demand for overseas duty. There is also separation within the Armed Forces community on the basis of the rank and language barriers. All of this leads to frustration felt by the military family, who believes it has little or no control over its future.

This lack of control is felt in a pronounced fashion within the junior ranks. Frequent moves have their greatest impact on military spouses who are attempting to establish a career. If a spouse cannot pursue a career or, at the very least, find a job, this detrimentally affects a family's standard of living. This has led, in the worse circumstances, to a reliance on food banks for subsistence living by families of soldiers in the lower ranks.

While the pay issue raised in the House of Commons report has been addressed in a marginal fashion, the raises have been less than adequate, again, at the lower ranks.

•(1750)

In addition to the problems of lack of control over one's future and inadequate pay at the lower ranks, there have been many problems with the housing provided to military families. The House of Commons report and, indeed, Senator Cohen's report detailed issues of mould, mildew, odour, poor insulation and ice buildup, causing illness and asthma, especially in the case of children.

All of these problems, plus the culture of the military, has led in many instances to spousal abuse. This is an insidious problem that the victim is often reluctant to report because it may have a detrimental effect on the abuser's career, leading to even more abuse. This matter has been studied at length by the Muriel McQueen Fergusson Centre and is being acted upon by the military. I believe there is a realization that the culture must change to reflect the culture of society where spousal abuse is no longer condoned. Support systems and prosecutions must become as common in the military as they are in civilian life.

I believe, as does Senator Cohen and those who wrote the report on this subject in the House of Commons, that many of the problems experienced in the families of the military stem directly from the lack of funding to the military by government. Cutbacks, combined with cancelled acquisition projects,

increased commitments throughout the world, less-than-adequate equipment, all contribute to the frustrations within the combat-ready part of the Canadian Forces.

I believe it is important for me to speak out on these subjects at this time as we are now just days away from a new budget. This is a budget which is supposed to address the funding issues which have dogged the Canadian military for years. Mr. Martin, in establishing his budget, had the opportunity to refer to two recent studies, "Caught in the Middle: An Assessment of the Operational Readiness of the Canadian Forces," drafted by the Conference of Defence Associations, and "To Secure a Nation," which comes from the Centre for Military and Strategic Studies at the University of Calgary. Both reports are particularly critical of this government's approach to military spending. They also link the issues of lack of funding to combat capability, to the issues of morale and concerns about the living standards of the junior ranks of the military.

In the chapter on defence budget, the Centre for Military and Strategic Studies states:

It is this lack of sustainability and depth in the expeditionary capability of the land forces that is the most damaging consequence of a decade of budget cuts and force contractions. The result is a military stretched to the limit, burdened by a rapid deployment rate (especially among specialists), and afflicted with numerous morale and retention problems. Furthermore, the Canadian military continues to confront the problem of "rust out" in some important categories.

There is a deep divide between the rhetoric of a grandiose foreign and defence policy and a decline in resources that threatens to discredit Canada's commitment to common security. Neither those who favour a traditional approach to security nor those who promote the new concept of human security are happy with this situation, for obvious reasons.

The Conference of Defence Associations is particularly critical of the results which have been occasioned by continuous budget cuts. It states:

The navy will not be able to deliver its mandated level of maritime defence capability without additional resources...

The air force is "one deep" in many areas and has lost much of its flexibility, redundancy and ability to surge...

The army is not sustainable under the current circumstances...

It is my hope that the Minister of Finance will address these needs, as well as the needs articulated by Senator Cohen, the House of Commons Standing Committee on National Defence and Veterans Affairs, and the Muriel McQueen Fergusson Centre for Family Violence Research.

At a recent meeting of the Security and Defence Committee, General Henault, Chief of Defence Staff, appeared as a witness. During that meeting, when asked by my colleague Senator Meighen if he were to receive more funding, where he would direct it, he stated the following:

I would direct them to three different capability requirements. The first area would be people. That is where we need to put our effort and that is where additional funding would be focused.

He further stated, when asked, "Does that mean quality of life, recruitment or training?" He replied: "It means all of the above."

If that is the priority of the Chief of Defence Staff, then I, for one, would support that line of thinking.

I was impressed by the Chief of Defence Staff's comments that his first priority would be people. Personnel who are not committed to their responsibilities and unsatisfied with their quality of life will not perform to the level that Canadians have come to expect.

What we need is a holistic approach to the funding of our Armed Forces. Funds must be spent on capital acquisitions, but they must also be directed towards the quality of life experienced by all those involved in the Canadian Forces.

I want to close with a quote from the report of the Conference of the Defence Associations:

The watershed of change under way in world affairs is bringing pressure to bear on Canada to provide necessary resources to implement its defence policy...

The situation will not improve until Canadians and their government realize that the cost of effective Armed Forces is the price of doing business in the modern world. Nations, particularly those in the G7 group, who shirk their duties in this respect may anticipate unfavourable treatment in the international economic domain. Criticisms from allies, particularly our most important trading partner, the United States, are becoming louder.

I hope Mr. Martin is not only listening to the concerns of our allies but also to the voices of those who spoke to Senator Cohen in her visits to Camp Gagetown. All who are concerned with the

issues of quality of life for those in the Canadian Forces and those who support them will be watching.

The Hon. the Speaker *pro tempore*: If no other senator wishes to speak, this item will be considered debated.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Jim Tunney, for Senator Gustafson, pursuant to notice of December 5, 2001, moved:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 4:30 p.m. on Tuesday, December 11, 2001, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[Translation]

ADJOURNMENT

Leave having been given to revert to Notices of Government Motions:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Monday next, December 10, 2001, at 8 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Monday, December 10, 2001, at 8 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
 (1st Session, 37th Parliament)
 Thursday, December 6, 2001

GOVERNMENT BILLS
 (SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10	01/06/14	13/01
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02 Senate agreed to Commons amendments 01/06/12	01/06/14	14/01
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04	01/06/14	12/01
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01	01/06/14	10/01
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11 + 2 at 3rd (01/06/06)	01/06/07	01/10/25	25/01
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15	01/06/14	8/01
S-31	An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	01/09/19	01/10/17	Banking, Trade and Commerce	01/10/25	0	01/11/01		

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-33	An Act to amend the Carriage by Air Act	01/09/25	01/10/16	Transport and Communications	01/11/06	0	01/11/06		
S-34	An Act respecting royal assent to bills passed by the Houses of Parliament	01/10/02	01/10/04	Rules, Procedures and the Rights of Parliament					

**GOVERNMENT BILLS
(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources	01/06/06	0	01/06/12	01/06/14	18/01
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources	01/06/06	0	01/06/14	01/06/14	23/01
C-6	An Act to amend the International Boundary Waters Treaty Act	01/10/03	01/11/20	Foreign Affairs					
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30	01/09/25	Legal and Constitutional Affairs	01/11/08	11			
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	01/06/06	01/06/14	9/01
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs	01/06/07	0	01/06/13	01/06/14	21/01
C-10	An Act respecting the national marine conservation areas of Canada	01/11/28							
C-11	An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger	01/06/14	01/09/27	Social Affairs, Science and Technology	01/10/23	0	01/10/31	01/11/01	27/01
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29	01/06/14	7/01
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	15/01
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications	01/10/18	0	01/10/31	01/11/01	26/01
C-15A	An Act to amend the Criminal Code and to amend other Acts	01/10/23	01/11/06	Legal and Constitutional Affairs					
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance	01/06/07	0	01/06/11	01/06/14	11/01
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance	01/06/12	0	01/06/12	01/06/14	19/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	17/01
C-24	An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts	01/06/14	01/09/26	Legal and Constitutional Affairs	01/12/04	0 + 1 at 3rd	01/12/05		
C-25	An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts	01/06/12	01/06/12	Agriculture and Forestry	01/06/13	0	01/06/14	01/06/14	22/01
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	16/01
C-28	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	01/06/11	01/06/12	—	—	—	01/06/13	01/06/14	20/01
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/06/13	01/06/14	—	—	—	01/06/14	01/06/14	24/01
C-31	An Act to amend the Export Development Act and to make consequential amendments to other Acts	01/10/30	01/11/20	Banking, Trade and Commerce	01/11/27	0	01/12/06		
C-32	An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica	01/10/30	01/11/07	Foreign Affairs	01/11/21	0	01/11/22		
C-33	An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts	01/11/06 (withdrawn 01/11/21) 01/11/22 (reintroduc ed)	01/11/27	Energy, the Environment and Natural Resources					
C-34	An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts	01/10/30	01/11/06	Transport and Communications	01/11/27	0	01/11/28		
C-35	An Act to amend the Foreign Missions and International Organizations Act	01/12/05							
C-36	An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism	01/11/29	01/11/29	Special Committee on Bill C-36					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-37	An Act to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act	01/12/04							
C-38	An Act to amend the Air Canada Public Participation Act	01/11/20	01/11/28	Transport and Communications	01/12/06	0			
C-39	An Act to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts	01/12/04							
C-40	An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed, or otherwise ceased to have effect	01/11/06	01/11/20	Legal and Constitutional Affairs	01/12/06	0			
C-41	An Act to amend the Canadian Commercial Corporation Act	01/12/06							
C-44	An Act to amend the Aeronautics Act	01/12/06							
C-45	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/12/05							

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5	referred back to Committee 01/10/23		
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications	01/06/05	0	01/06/07		
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Rules, Procedures and the Rights of Parliament					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Rules, Procedures and the Rights of Parliament (Committee discharged from consideration—Bill withdrawn 01/10/02)					
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01		
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15	Bill withdrawn pursuant to Commons Speaker's Ruling 01/06/12	
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn) 01/05/10	01/11/27	0			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications					
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26 Social Affairs, Science and Technology					
S-22	An Act to provide for the recognition of the Canadian Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21	01/06/11	Agriculture and Forestry	01/10/31	4	01/11/08		
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02	01/06/05	Transport and Communications					
S-29	An Act to amend the Broadcasting Act (review of decisions) (Sen. Gauthier)	01/06/11	01/10/31	Transport and Communications					
S-30	An Act to amend the Canada Corporations Act (corporations sole) (Sen. Atkins)	01/06/12	01/11/08	Banking, Trade and Commerce					
S-32	An Act to amend the Official Languages Act (fostering of English and French) (Sen. Gauthier)	01/09/19	01/11/20	Legal and Constitutional Affairs					
S-35	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	01/12/04							

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-36	An Act respecting Canadian citizenship (Sen. Kinsella)	01/12/04							

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02	01/06/14	
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	
S-28	An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	

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• 37th PARLIAMENT

• VOLUME 139

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OFFICIAL REPORT
(HANSARD)

Monday, December 10, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Monday, December 10, 2001

The Senate met at 8:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

FIFTY-THIRD ANNIVERSARY OF THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition):

Honourable senators, 53 years ago today, the General Assembly of the United Nations, meeting at the Palais du Chaillot in Paris, proclaimed the Universal Declaration of Human Rights "as a common standard of achievement for all people and all nations."

Up until the very last moment, it was not certain that Canada would number among the 48 states voting in favour of the declaration. On December 7, 1948, a survey of member states indicated that Ottawa would not support the vote. When this was realized, and given the company that Canada would be in among the eight states planning to abstain, such as Apartheid South Africa, Canada fortunately came around.

Today, honourable senators, in Canada, Parliament must work very hard to resist the type of rationalization of the Ottawa of the 1940s, which flirted with not supporting the Universal Declaration. Parliament must become the sentinel for the protection and promotion of human rights and not allow itself to be co-opted in the direction of limiting the human rights of Canadians.

Parliament must also be on guard against those who camouflage the limiting of human rights behind the screen of a new vocabulary that speaks of existential phenomena, which is nothing but a cover to shroud a new flirtation with the limiting or derogation of rights standards that Canadians embrace.

Honourable senators, if there ever was a shibboleth, it is the watchword of human security, the new criterion of those who would seek to permit the limitation or abrogation of human rights. The claim that the right to human security somehow trumps other rights is an error. It is as much an error as the claims of those who postulate that economic, social and cultural rights trump civil and political rights. Rather, honourable senators, there is an inherent, intrinsic unity of human rights. This is the principle that must inform any measure that would seek to limit or abrogate human rights in the name of human security.

In 1948, the General Assembly also decided to prepare a covenant or treaty on human rights to provide the machinery to

implement the rights articulated in the declaration. Since 1976, Canada has been bound by the covenant, both on civil rights and economic rights. Of great importance to Canada these days are the provisions of Article 4 of the International Covenant on Civil and Political Rights, which sets out the parameters on any attempt by Canada to limit or abrogate the rights of Canadians. These limits, for example, include the right never to be subjected to torture, and the right to be free from racial, ethnic or religious discrimination, even in times of public emergencies, where the life of the nation itself may be threatened.

The non-emergency, statutory limitations to human rights, such as those in anti-terrorist legislation, are subject to the communication mechanism of the optional protocol of the Covenant on Civil and Political Rights. It is my prediction that Canadians will successfully use this vehicle, and that the currently proposed anti-terrorist legislation will be found to limit the human rights of Canadians, contrary to the international guarantees to which we are bound.

[Translation]

MONTFORT HOSPITAL OF OTTAWA

DECISION OF ONTARIO COURT OF APPEAL

Hon. Yves Morin: Honourable senators, you will remember that at our last sitting, I expressed my support for the right of francophones to have access to health care services in their mother tongue, and I applauded the initiatives of the francophone leaders in that respect.

Therefore, I was very pleased on Friday to hear the unanimous decision of the Ontario Court of Appeal regarding the Montfort Hospital. This decision confirms the right of francophone minorities to health services in French.

This legal argument strengthens, if you will, the medical evidence to the effect that health services, whether we are talking about health promotion and protection, diagnosis or therapy, can only be efficient and effective if they are provided in the patient's language.

The decision of the Ontario Court of Appeal was welcomed by our government, as illustrated by the statements of Ministers Stéphane Dion and Don Boudria.

According to Radio-Canada, there is a possibility that the Government of Ontario may, with the support of the Government of Quebec, ask the Supreme Court to overturn this decision.

• (2010)

I am asking Mr. Harris and Mr. Landry to put an end to this legal warfare and to recognize once and for all the fundamental constitutional rights of francophone minorities.

[English]

FIFTY-THIRD ANNIVERSARY OF THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

Hon. Michael A. Meighen: Honourable senators, it gives me great pleasure to rise to acknowledge the fifty-third anniversary of the United Nations Universal Declaration of Human Rights, proclaimed on this very day in 1948.

It is important that we mark this day, especially this year, in this country, where we are struggling to find the right balance between the preservation and promotion of human rights while, at the same time, drafting laws that will enable our government, our police forces and other agencies to mount an effective fight against terrorism.

Both Bill C-36, which is before us now in the Senate, and Bill C-42, which is in the other place, curtail certain rights in the name of the fight against terrorism. We, as legislators in this chamber of sober second thought, are called upon to determine whether the government, in achieving its purpose, has successfully protected the rights of all Canadians.

For guidance in our deliberations, we can do little better than take into consideration some of the clauses of the International Covenant on Economic, Social and Cultural Rights, as well as the International Covenant on Civil and Political Rights. Both of these instruments, which proclaim rights that we seek to apply throughout the world, contain clauses that make it crystal clear that, even in times of emergency, certain rights remain inviolate.

Article 5 of the International Covenant on Civil and Political Rights states:

Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or their limitation to a greater extent than is provided in the present Covenant.

• (2010)

Article 4 of the International Covenant on Economic, Social and Cultural Rights states that even in times of public emergency there can be no discrimination on the grounds of race, colour, sex, language, religion or social origin.

Honourable senators, we must ensure that, in Canada, even in a time when we feel threatened by terrorism, our basic human rights remain secure.

[Senator Morin]

[Translation]

MONTFORT HOSPITAL OF OTTAWA

DECISION OF ONTARIO COURT OF APPEAL

Hon. Serge Joyal: Honourable senators, the unanimous decision brought down by three justices of the Ontario Court of Appeal last Friday, December 7, in the case relating to the maintenance of French-language services at Ottawa's Montfort Hospital involves at least two significant conclusions.

First, the court states that maintenance of the rights of linguistic minorities constitutes the basis of the entire constitutional structure of our country. Second, the recognized constitutional protection of linguistic minorities goes beyond the mere letter of our Constitution.

The implications arising out of these conclusions go far beyond the constitutional theory espoused until now by authors and jurists who have written or spoken on these matters.

I will address the first point, that protection of minority language rights is the basis of the constitutional structure of our country.

This conclusion is based on an analysis by the court of our entire constitutional system. According to the court, our system of government constitutes a rational and cohesive whole. Protection of minority rights is one of the fundamental principles of our constitutional structure.

In other words, the objective of protecting minority language rights must be present not only in the federal structure of our country but also in the way the legislative power is divided between the two chambers of Parliament, indeed in the very composition of our chamber, the Senate, where Quebec is divided into 24 senatorial divisions designed to give the anglophone minority a voice.

This conclusion by the court is an important one in that it raises questions as to how prepared we are to recognize and protect the equal status of both official languages in Ottawa, the national capital.

The second Appeal Court conclusion is that the linguistic rights protected are not limited to those expressly mentioned in the Constitution Act, 1867, or those entrenched in s. 23 of the Canadian Charter, that is, the rights to education.

It has been sustained several times in the past, by eminent jurists moreover, that over and above this protection the provinces might of course add on to this list, but still maintain the ability to repeal it, in accordance with the principle of the provinces' legislative supremacy.

In the case of the Montfort Hospital, I have personally sustained the opposite opinion, as has Honourable Senator Gauthier, in a letter to the Prime Minister of Canada on August 9, 2000, calling upon him to ask the Attorney General of Canada to intervene in the Court of Appeal in support of this fundamental point, namely that the governments' obligations with respect to minority language rights were not restricted to those rights specifically listed in the law.

The Court of Appeal confirmed this conclusion. It ruled that the Ontario government may not impair the present role of the Montfort Hospital, because it is a vital institution for the life and development of the minority francophone community. This ruling by the court is a fundamental development, which will have real consequences for the future of minority official languages communities and for the scope of the role of Canada's Parliament and its judicial institutions.

Honourable senators, we must rejoice over this unanimous decision. It leaves no doubt about the direction our country must take.

RIGHT TO FREEDOM OF RELIGION

Hon. Gérald-A. Beaudoin: Honourable senators, in 1948, the Universal Declaration of Human Rights was proclaimed. It would change values in our modern world considerably. Today, I want to look at one of these rights, the right to freedom of religion.

The right to freedom of religion, guaranteed by paragraph 2(a) of the Canadian Charter of Rights and Freedoms, is a fundamental right in a democracy.

There is no state religion in Canada, as the Supreme Court confirmed in *Chaput* in 1955 and in *Big M Drug Mart* in 1985. Freedom of religion has been the subject of a few Supreme Court decisions, particularly as it concerns family law, youth protection, statutory leave, education law, municipal law, tax law and criminal law.

A quick review of the jurisprudence would seem to indicate that the Lord's Day Act violates the freedom of religion. However, a province may impose a weekly day of rest.

This freedom of religion includes the rights of the parents to educate and care for their children according to their religious beliefs. However, this freedom is not absolute. In family matters, it has been decided that the test of the interests of the child overrides the parents' freedom of religion.

Section 2(a) of the Charter recognizes the right to state one's religious beliefs openly, without fear of reprisal. As well, pursuant to our international commitments, freedom of religion is interpreted broadly and generously by our courts and limits on

this freedom must be reasonable in a free and democratic society, as set out in section 1 of the Charter.

MONTFORT HOSPITAL OF OTTAWA

DECISION OF ONTARIO COURT OF APPEAL

Hon. Jean-Robert Gauthier: Honourable senators, the judgement brought down by the Ontario Court of Appeal regarding the Montfort Hospital delighted me. It took five years of work, with a group from Ottawa-Vanier and the region of Ottawa to save a hospital, which was essential for our survival.

The Health Services Restructuring Commission ordered the closing of the Montfort Hospital, thereby violating section 7 of Ontario's French Language Services Act. Yes, such an act does exist in Ontario, and the commission had not respected it.

According to the Court of Appeal, the Government of Ontario's Health Services Restructuring Commission had not taken all of the necessary measures to comply with the act. By not giving enough weight and importance to the role of the Montfort Hospital for the survival of the francophone minority in Ontario, the commission did not fulfil its mandate in the public interest, according to the judges of the Appeal Court of Ontario.

The court rejected the Government of Ontario's appeal, confirmed the order in guidelines of the commission and referred the whole matter to Ontario's Minister of Health. Now we can only hope that the case will not be appealed.

The Montfort is the only hospital in Ontario to provide a whole range of medical services and training in a French environment. The Court of Appeal also confirmed that the Constitution's unwritten principles, as recognized by the Supreme Court, have a formal and fundamental structural characteristic.

● (2020)

Its principles are those of federalism, democracy, constitutionalism, rule of law and respect for minorities. This decision applies throughout Canada. It will have a significant impact in all provinces.

In addition, the Court of Appeal confirmed that the Health Services Act enriches the language rights guaranteed by the Constitution of Canada in order to advance the equality of status of the use of French as provided in subsection 16.3 of the Canadian Charter of Rights and Freedoms. This decision obviously delighted me, and I share with all French and English Canadians in this country in the victory of December 7.

Honourable senators, I will conclude my remarks by saying it is true that there were some difficult moments. There were difficulties, there is no doubt, but we are proud of our win. We have learned that when you are under attack, you learn to defend yourself.

We francophones in Ontario, and elsewhere, can defend ourselves. We know how to win with some finesse, but we hope this decision will be final. Enough foolishness!

[English]

The Hon. the Speaker: I regret that the time for Senators' Statements has expired.

ROUTINE PROCEEDINGS

ANTI-TERRORISM BILL

REPORT OF SPECIAL COMMITTEE PRESENTED

Hon. Joyce Fairbairn, Chair of the Special Senate Committee on Bill C-36, presented the following report:

Monday, December 10, 2001

The Special Senate Committee on Bill C-36 (formerly the Special Senate Committee on the Subject-Matter of Bill C-36) has the honour to present its

SECOND REPORT

Your Committee, to which was referred Bill C-36. An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism, has, in obedience to the Order of Reference of Thursday, November 29, 2001, examined the said Bill and now reports the same without amendment, but with the appended observations.

Respectfully submitted,

JOYCE FAIRBAIRN
Chair

(For text of observations, see today's Journals of the Senate, Appendix, p. 1103.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I move that this bill be placed on the Orders of the Day for third reading tomorrow.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I cannot raise a point of order until we are into Orders of the Day. However, I would like permission to examine the report. If I heard the Clerk correctly, he said that this report on Bill C-36 was being made without amendments, but that there is an attachment. If there is an attachment, I will be arguing that rule 97(4) does not apply, because the senators need to have an opportunity to debate that attachment.

The Hon. the Speaker: We are in Routine Proceedings, as Senator Kinsella observed, and I am in the process of putting the [Senator Gauthier]

motion. I do not think there is any objection to any senator examining the record. Accordingly, the honourable senator should feel free to do so.

Senator Kinsella: Under what rule?

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

On motion of Senator Carstairs, bill placed on the Orders of the Day for third reading at the next sitting of the Senate, on division.

[Translation]

SCRUTINY OF REGULATIONS

FOURTH REPORT OF COMMITTEE TABLED

Hon. Céline Hervieux-Payette: Honourable senators, I have the honour of tabling the fourth report of the Standing Joint Committee on the Scrutiny of Regulations, which concerns a subsection of the Northwest Territories Reindeer Regulations, and, at this point in the year, I think it appropriate to recommend these regulations be disallowed, as they are not, in our opinion, legal.

[English]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TENTH REPORT OF COMMITTEE PRESENTED

Hon. Richard H. Kroft presented the tenth report of the Standing Committee on Internal Economy, Budgets and Administration:

Monday, December 10, 2001

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

TENTH REPORT

Your Committee has approved the Senate Estimates for the fiscal year 2002-2003 and recommends their adoption.

Your Committee notes that the proposed total budget is \$63,900,850.

Respectfully submitted,

RICHARD H. KROFT
Chair

The Hon. the Speaker: When shall this report be taken into consideration?

On motion of Senator Kroft, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-46. An Act to amend the Criminal Code (alcohol ignition interlock device programs).

Bill read the first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Carstairs, bill placed on the Orders of the Day for second reading two days hence.

[English]

THE SENATE

MOTION TO AUTHORIZE TAPING OF SEGMENTS OF PROCEEDINGS FOR PURPOSES OF CREATING EDUCATIONAL VIDEO ADOPTED

Hon. Richard H. Kroft: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move, seconded by the Honourable Senator Austin:

That the Senate authorize the videotaping of segments of its proceedings, including Royal Assent, before the Senate rises for its forthcoming Christmas adjournment, for the purpose of making an educational video.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

• (2030)

Hon. Consiglio Di Nino: Perhaps Senator Kroft could give some clarification. Is he talking about today, tomorrow or the next couple of days? Perhaps he can give us some indication of what it is all about.

Senator Kroft: Honourable senators, last year the Standing Committee on Internal Economy, Budgets and Administration approved the production of an educational video cassette about the Senate. The project has advanced to the stage of filming, and I ask today for your agreement to permit a crew of five

individuals — a producer, two camera operators, one assistant and their advisor, former Deputy Clerk Richard Greene — into the chamber to film parts of the proceedings. They will be taking raw footage that will be edited for final approval by the Standing Committee on Internal Economy, Budgets and Administration. Their work will be undertaken with utmost discretion and with the least interruption possible to our daily activities.

Providing Canadians with an authentic portrayal of the work that goes on in the Senate, sharing traditions, such as the Speaker's parade, and showcasing the architectural splendour of the chamber will help our fellow citizens gain a better understanding of the Senate as an institution and the contribution the Senate makes to public policy. I urge you to support this. I believe this deserves our support.

The Hon. the Speaker: The motion of Senator Kroft was put and passed. I should ask for leave to continue a proceeding that is not provided for in Routine Proceedings, that of questions from one senator to another. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Di Nino: Honourable senators, the request is unusual. It is one of which most of us were not aware, and some explanation is necessary for us to be fully informed. Senator Kroft, obviously, was prepared to give an explanation because he read one. Therefore, it is no big surprise, but I asked a question as well. Is this filming to take place before we rise for the Christmas recess? Is the honourable senator talking about tomorrow, the day after or the next day? Could he give us some indication on the process here?

Senator Kroft: Honourable senators, I do apologize for what appears to be an element of surprise here. The filming of the video was discussed and approved by the Internal Economy Committee, but it was some time ago, and, obviously, it is not fresh in the minds of many of the senators, even those who are on the committee.

The intention is to have the video completed in February, which involves getting the recording done now before we break, and it is also an opportunity to take advantage of the many procedural event that will take place, with quite a full house, and even the possibility of Royal Assent. It is an unusual opportunity, a timely one, and one we would be sorry to miss because it would severely delay the making of this educational video. It certainly would give an opportunity to record things that might not otherwise be available. Again, as I said in that note, it will be subject to a full review and editing by the Internal Economy Committee.

Hon. Eymard G. Corbin: Honourable senators, I have a question for the chair of the committee. What assurance can he give us that there will be a significant number of members of the other place in attendance for the event, or will we be submitted to the usual charade of the Speaker and a few acolytes?

Senator Kroft: I presume the honourable senator is referring to the Royal Assent component. If I could give that assurance, I would be claiming powers that far exceed even those of the Internal Economy Committee. Obviously, every effort will be made to present the ceremony well, and a full attendance of the members of this house through this week will be the best assurance of the successful production.

Motion agreed to.

SCRUTINY OF REGULATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO PERMIT ELECTRONIC COVERAGE

Hon. Céline Hervieux-Payette: Honourable senators, I give notice that at the next sitting of the Senate, I will move:

That the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

[Translation]

THE SENATE

NOTICE OF MOTION TO STRIKE SPECIAL COMMITTEE ON SUPPORT FOR LA RELÈVE IN THE ARTS

Hon. Céline Hervieux-Payette: Honourable senators, I give notice that on Wednesday, December 12, 2001, I will move:

That a special committee of the Senate known as the "Special Senate Committee on Support for *La relève in the Arts*" be appointed to examine the role the Government of Canada can play through its own activities and programs and in cooperation with the provinces and with other interested partners, to support the coming generation of artists, arts organizations and art lovers in Canada.

Within the general framework of the negotiations undertaken by the Government of Canada within the World Trade Organization, and the efforts to conclude a free trade area of the Americas agreement, it is imperative that the cultural sector be treated differently and that special measures be considered to protect the original and authentic nature of Canadian culture.

Furthermore, in a world where communications are global, it is important that Canadian parliamentarians gauge the impact of globalization on Canadian culture and examine what the public and private sectors should be doing to promote and consolidate the arts in Canada.

That is why I will be moving that a special committee of the Senate be appointed to examine the important issue of providing support for *La Relève* in the Arts;

That the special committee consist of five Senators, three of whom shall constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers, briefs and evidence as may be ordered by the committee;

That the committee have power to authorize television and radio broadcasting or dissemination through the electronic media, as it deems appropriate, of any or all of its proceedings and the information it possesses;

That the committee have power to sit during adjournments of the Senate pursuant to rule 95(2) of the *Rules of the Senate*; and

That the committee present its final report no later than two years after it is appointed.

[English]

QUESTION PERIOD

NATIONAL DEFENCE

THE BUDGET—ADEQUACY OF ADDITIONAL ALLOCATION— POSSIBILITY OF NEW WHITE PAPER

Hon. J. Michael Forrestall: Honourable senators, I wonder if we could find enough money to commit to film the Canadian Armed Forces now before it disappears into oblivion.

Honourable senators, my question is directed to the Leader of the Government in the Senate. I must preface it by saying that I am keenly disappointed in the budget and disappointed with the reaction of the government to the positions put forward by the various commanders in their various Level 1 business plans. This year they will be \$1.3 billion short. There simply is not enough money to sustain the commitments of the 1994 White Paper on Defence, nor to allow the forces to do anything except structure downward, when, in fact, what they want to do is restructure latterly to provide a better force. In this regard, the Level 1 business plans of the three service chiefs and the Assistant Deputy Minister Materiel state they are \$1.3 billion short per year in order to fulfil their government assigned tasks. The Auditor General agrees. The government, knowing that the military is \$1.3 billion short of being in the black this year, gave them \$1.2 billion over five years. If they are \$1.3 billion short this year, next year and the year after that, adding inflation, one can readily see that \$1.2 billion spread over five years can mean nothing other than restructuring downward.

• (2040)

Can the Leader of the Government in the Senate give us some indication as to whether the plans for this downgrading are in place? If they are not, what steps is the government taking either to put the plan for this restructuring in place or, perhaps — and I think “perhaps” makes more sense — to present Canadians with a new defence white paper?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator expresses his disappointment, and that, I suppose from his perspective, is reasonable. However, I do not think an increase of \$1.2 billion should be sneezed at. I certainly do not think \$300 million for new equipment should be seen as anything but a positive enhancement of our military potential. I see \$1.6 billion over five years towards emergency preparedness. Yes, that does include the \$1.2 billion for the military, but it is important that we have doubled the capacity of Joint Task Force 2, our elite anti-terrorist unit. We have enhanced laboratory networks and the purchase of specialized equipment to deal with such things as chemical, biological, and nuclear threats and warfare. All of this must be seen as a package to make us better prepared for terrorist acts as well as support for the military.

Senator Forrestall: Honourable senators, the Auditor General said to be cautious when we listen to utterances such as that one and to take it with a grain of salt — actually, I prefer an Aspirin.

The military needs \$6.5 billion over five years to fulfil its existing shortfall in capital programs, as stipulated and called for in the defence white paper of 1994. Instead, we have the Leader of the Government praising the government for giving the Canadian military \$300 million for capital purposes over two years. To catch up with 1994, \$6.5 billion is needed, and this government is offering \$300 million over the next two years. I fail to bring the two together and I fail to see anything to applaud in that.

What capital programs are now facing National Defence, or has the government any? I have asked three or four questions, yet I do not get any answers. I may ask 1,000. It would be very pleasant to get one response.

Senator Carstairs: Honourable senators, since 1999, there has been an addition of \$3.9 billion in funding for National Defence. They will receive an additional \$1.2 billion. The government did not wish to go into a deficit position. It wished to have a balanced budget because that is the wish of Canadians, and I think the government met the expectations of most Canadians. I regret that the government clearly did not meet the expectations of the Honourable Senator Forrestall, but, after all, he does not support the government on most initiatives.

Senator Forrestall: Honourable senators, I certainly do not support the government in what it is doing to Canada's national defence ability to meet the directions given to it in 1994.

Can the Leader of the Government answer the following question, yes or no: Will the government be releasing a new white paper on defence because of this traumatic downgrading of the wherewithal to meet even the requirements set out in the existing white paper on defence?

Senator Carstairs: Honourable senators, I have no knowledge about the publication of a new white paper on defence.

We must realize that the concept of war and the whole world structure has, in large part, changed since September 11. That is necessitating expenditures in areas that, I would suggest to you, prior to September 11 were not considered. Those particular issues, namely, security of our borders, security at our airports and security in the air, are all parts of the necessity to make a fresh examination of the real needs of Canadians in order to protect ourselves.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it being 8:44 p.m., pursuant to the order adopted by the Senate on Thursday, December 6, 2001, it is my duty to interrupt the proceedings to dispose of all questions on the motion of Senator Milne for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other acts, with amendments).

The bells to call in the senators will be sounded for 15 minutes so that the vote can take place at 9 p.m. Call in the senators.

The Senate adjourned during pleasure.

The sitting of the Senate was resumed.

• (2100)

YOUTH CRIMINAL JUSTICE BILL

MOTION TO ADOPT REPORT OF COMMITTEE NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other acts, with amendments) presented in the Senate on November 8, 2001.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kelleher
Angus	Keon
Atkins	Kinsella
Beaudoin	LeBreton
Bolduc	Lynch-Staunton
Cochrane	Meighen
Comeau	Moore
Di Nino	Murray
Dooddy	Nolin
Eyton	Oliver
Forrestall	Rivest
Grafstein	Robertson
Gustafson	Sparrow
Hervieux-Payette	Spivak
Joyal	Stratton—30.

NAYS
THE HONOURABLE SENATORS

Austin	Kenny
Banks	Kolber
Biron	Kroft
Bryden	LaPierre
Carstairs	Lapointe
Chalifoux	Léger
Christensen	Losier-Cool
Cook	Maheu
Corbin	Mahovlich
Cordy	Milne
Day	Morin
De Bané	Pearson
Fairbairn	Phalen
Ferretti Barth	Poulin
Finnerty	Poy
Fitzpatrick	Robichaud
Fraser	Rompkey
Furey	Setlakwe
Gauthier	Stollery
Gill	Taylor
Graham	Tunney
Hubley	Wiebe—45.
Jaffer	

ABSTENTIONS
THE HONOURABLE SENATORS

Adams
Cools—2.

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Milne, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

QUESTION PERIOD

The Hon. the Speaker: Honourable senators, we resume the proceedings. We are in Question Period with 21 minutes remaining.

FINANCE

THE BUDGET—CASH-FLOW BENEFIT TO SMALL CORPORATIONS

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate and it concerns the budget proposal to allow corporations to defer their winter tax installments until next summer. The official justification for this, as given in the budget paper, is that it will provide a cash-flow benefit to small corporations.

Will the government leader concede that the accounting effect of this measure will be to push \$2 billion of revenue from the current fiscal year into next year and, in the process, allow the government to claim that it has a balanced budget next year? Is not the real reason for this measure the cash-flow benefit to the government?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, some people obviously see bogeymen where I do not think bogeymen exist. There was a very simple reason for this decision. There has been an economic downturn. Economic downturns usually have greater impacts on small business. In order to give small businesses a bit of a boost, this payment can be deferred. All of the economic forecasts say that, by the second quarter, the American economy will have turned around and will be much more vibrant.

Senator Bolduc: This tax measure is only available for corporations. It does not affect unincorporated small businesses. It will not help unincorporated farmers to make it through the winter. It will not help most fishermen. It will not help those in a professional practice. Could the leader explain why, in the view of the government, this kind of cash-flow assistance is appropriate if one is running a store or a farm or a bed-and-breakfast as a corporation, but not if one is running it as an unincorporated proprietor?

• (2110)

Senator Carstairs: Honourable senators, with the greatest respect, I think Senator Bolduc is aware that more and more people are incorporating. Yes, there are still some small business owners in this country who do not incorporate, but the vast majority of them have decided that they will incorporate for a whole raft of reasons, not the least of which is that it makes for clearer accounting principles and practices. This was relief that the government could readily provide, and it did so.

[Translation]

Senator Bolduc: Where does the minister get her statistics to prove that there are more incorporated businesses than unincorporated ones? Come now, that makes no sense!

[English]

Senator Carstairs: I think I indicated that more and more were incorporating.

FISHERIES AND OCEANS

ATLANTIC SALMON FISH FARM INDUSTRY—COMPETITION IN UNITED STATES WITH CHILEAN SALMON

Hon. Gerald J. Comeau: Honourable senators, my question is to the Leader of the Government as well. The minister is probably aware that there has been a deepening problem with the dumping of Chilean farm salmon in the United States market that has been developed by Atlantic Canadian fish farmers for Atlantic salmon. The minister may be also aware that these fish farmers were in Ottawa last week to try to get some help from the government. They met with ministers and the Fisheries and Oceans Committee of the other place. They explained how they were losing \$50 million annually, which runs to approximately \$1 loss for every pound of fish they sell in the United States. We saw there was no provision in the budget for any kind of response to this deepening problem. Would the minister advise us as to whether there has been any discussion on what to do with this deepening problem in Atlantic Canada?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is a serious problem, as the honourable senator has indicated. The dumping is a provision that the government is monitoring very carefully. I would anticipate that there will be further meetings with the interested parties because there have certainly been discussions at this point and, as I understand it, they are ongoing.

Senator Comeau: Honourable senators, the minister is probably aware that approximately 4,000 people depend on this very important fishery, and it used to be a growing fishery. It brings in about \$256 million a year in revenue. Of more importance, however, is that it is in those areas that most need that income, the coastal communities and rural areas of Atlantic Canada. As her colleague sitting next to her will know, this is an extremely important industry in New Brunswick. As a matter of fact, they no longer call the provincial department the Ministry of Fisheries but the Ministry of Fisheries and Aquaculture. The minister knows how important it is to the people in that area, and she may be aware that the minister from New Brunswick just this week did say that something had to be done very quickly.

I want to impress on the minister the urgency of dealing with this situation. I am concerned that there is no reference whatsoever to it in the budget.

Senator Carstairs: Honourable senators, as the honourable senator indicated, the meetings with the House of Commons Fisheries and Oceans Committee took place only last week. The honourable senator would recognize that the budget was probably well put to bed by that time. However, that is not to say that the Department of Fisheries is not aware of this issue. They are. It has been the subject of ongoing negotiations and discussions. I can tell the honourable senator that when cabinet meets later this week, I will again raise the matter.

AGRICULTURE AND AGRI-FOOD

THE BUDGET—ALLOCATION FOR FARM COMMUNITY

Hon. Leonard J. Gustafson: Honourable senators, very few farmers are incorporated. There are a few, but very, very few.

The latest federal budget contains no new support for Canadian farmers despite the fact that they have operated at a significant disadvantage compared to their highly subsidized counterparts in the United States and Europe, and they have struggled for the last three years. They were looking forward to the budget, the first in just about two years, and there is no hope there for them. This is a blow to agriculture. This budget is a security measure and offers little in terms of our farmers and the rest of the country. There is a lot of talk these days about security, and our farmers are facing a very serious problem, and here again they have been let down. What answer does the minister have for our farmers in view of this budget today?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the \$500-million program which was announced last year has been continued for the next budget year, and the Minister of Agriculture and Agri-Food is working with his provincial and territorial colleagues, as well as with farm groups, to create a new, integrated and financially sustainable agricultural policy. The government has reaffirmed its commitment to this renewal and this ongoing process. Clearly this has been a particularly difficult time for farm families, and particularly those in the grains and oilseeds industries.

Senator Gustafson: Honourable senators, coming back from the trade talks, the ministers laid out some hope that they would deal with the problems that farmers are facing in regard to the trade situation and in regard to the subsidies paid to farmers in the U.S. and Europe. Again, there is no new money in this budget for farmers. In fact, some of the old moneys that were put in have not been paid out. What kind of a direction is this? Does the government have no regard for agriculture at all?

Senator Carstairs: Honourable senators, I tried to indicate to the honourable senator the government's commitment to continue the \$500-million program that was not meant to continue into this fiscal year but will. You can call that no new money; however, it was money that was not going to be there but will be there.

Senator Gustafson: Honourable senators, are we then to conclude that the government will take no additional steps whatsoever to alleviate this situation and deal with this serious problem?

Senator Carstairs: Honourable senators, the honourable senator is well aware that agriculture is a joint federal-provincial responsibility, and that is why I indicated that discussions are ongoing between the Minister of Agriculture and Agri-Food and his provincial and territorial colleagues. However, this decision cannot be made alone by the federal government. There must be agreement in conjunction with the support of his territorial and provincial colleagues.

Senator Gustafson: In all fairness, the discussions have been ongoing for three or four years, and nothing has happened. This is beyond a joke now. Something must be done. This government has had no consideration whatsoever for agriculture. Does the minister see any change coming? There is certainly nothing in this budget.

Senator Carstairs: Honourable senators, a few weeks ago I heard doom and gloom from the honourable senator with respect to the WTO negotiations. They were not going anywhere, and there would be no resolution of the subsidy issue. That issue is now on the table. It will be resolved, and that will clearly be the most impressive thing we can do for farmers in this country.

Senator Gustafson: Do not hold your breath.

THE ENVIRONMENT

THE BUDGET—ALLOCATION OF FUNDS FOR MANAGING SUSTAINABILITY OF GREAT LAKES AND ST. LAWRENCE RIVER BASIN

Hon. Mira Spivak: Honourable senators, the Commissioner of Environment and Sustainable Development raised in a recent report some concerns with respect to the Great Lakes and the St. Lawrence River basin. She identified a number of areas where she felt that the federal government could do a better job of managing flora sustainability in the basin. Her recommendations were targeted at the Departments of Agriculture and Agri-Food, Environment, Fisheries and Oceans, Foreign Affairs and International Trade, Health and Natural Resources and the Parks Canada agency.

Unfortunately, the budget does not appear to direct new funding towards these departments or allocate new funding specifically for the managing of sustainability in this basin. We all know how important that particular basin is to Canada.

Could the Leader of the Government in the Senate give us some explanation for this omission in the budget?

• (2120)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, that

entire basin issue is part of the ongoing responsibility of a number of departments. Those departments have all received funding to continue to move forward on this initiative. None of their budgets has been cut in this regard.

Senator Spivak: Honourable senators, in their responses to the Commissioner of the Environment and Sustainable Development, all of the departments agreed with the recommendations. All of these departments pledged to do something to address the commissioner's concerns, depending on the availability of resources. In today's budget, the minister has failed to give these departments the additional financial resources to do their job. Is anything coming up in the near future that will enable these many departments to get the resources to do the job that is so vital to this major basin?

Senator Carstairs: Honourable senators, it is clear that the departments have resources; if they choose to reallocate those resources to deal with this issue, they can find the necessary dollars. They have made that commitment, and it is my hope that they will find the necessary dollars within their departments.

Senator Spivak: Honourable senators, has the cabinet decided that these departments should reallocate their resources in order to meet that commitment? Is that a priority of the government at this time?

Senator Carstairs: Honourable senators, the government is committed to meeting the goals that it so indicated to the commissioner.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my point of order relates to the earlier presentation of the special committee's report during Routine Proceedings by Senator Fairbairn. I have examined that report, which is on the Table. The report contains the signed bill and attachments. Among the attachments is the three-page document that has been circulated to all honourable senators. Therefore, we are dealing with a report with attachments.

When the item was read, we heard part of what was before us, namely, that Bill C-36 was being reported by the committee without amendments. Acting upon that part of what was before the chamber, the Speaker acted according to rule 97(4), which reads as follows:

When a committee reports a bill without amendment, such report shall stand adopted without any motion...

That is fine. The Speaker was correct as far as it went. If a bill is being reported without amendment, then pursuant to that rule the Speaker is obliged to consider that the report is adopted without any motion being made. Then the senator in charge of the bill will move third reading on a future day, which occurred.

Honourable senators, we have before us the second report of the Senate Special Committee on Bill C-36. I will not get into the issue of change of name; that is another issue. The last line of the report says: "...examined the said Bill and now reports the same without amendment, but with appended observations."

That is the report we have. If we do not pursue this matter, there is no time when the Senate will have an opportunity to debate the report and its appended observations. It seems that what was envisaged by rule 97(5) is what is applicable right now. Rule 97(5) provides as follows:

When the report recommends amendments to a bill, or makes proposals that require implementation by the Senate, consideration of the report shall not be moved unless notice has been given pursuant to rule 57(1)(e) or rule 58(1)(g), as the case may be.

If honourable senators turn to rule 58, which is the rule we normally follow when we have a report that is to be debated by the Senate, notice is given and the report is taken into consideration the following day. However, rule 57(1) refers to a special committee, and two days' notice is required.

Honourable senators, I am not so much concerned about the one or two days' notice, which may apply in this case because this is a special committee. My concern is that we have on the table a report that we may not be able to consider in its fullness, if it is not challenged. We will not have an opportunity to adjudicate.

Regardless of how the matter may come down at the end of the debate, we are not able to debate this report in its fullness if we are forced into third reading. Some senators may agree with the observations, others may disagree with them; we do not know. However, we certainly have a right to debate any report that is brought before us. Otherwise, what we are faced with, presumably, is that some senators are of one view in reporting Bill C-36 without amendment, while other senators are of another view.

The committee has done its work. We must now consider the view of all honourable senators. The views of honourable senators can only be ascertained or canvassed through debate. We at least have the right to debate this report prior to the consideration of third reading.

The committee had a choice to report the bill without amendments and did that. Rule 97(4) applies immediately. A motion to adopt is considered to have been dealt with and we are attending a motion for third reading. The committee also chose to report the bill with observations. Therefore, rule 97(4) does not apply, and more probably it is rule 97(5) that applies.

Honourable senators cannot escape the fact that on our Table is a report from a committee that contains a dialogue with observations, recommendations or however one wishes to

describe them, and its content and substance. This chamber has a right to debate those observations.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, in the case we are considering at this time, the committee has reported and it is clearly indicated in its report that:

[the committee] has reported the bill without amendment.

According to rule 97(4), and I quote:

When a committee reports a bill without amendment, such report shall stand adopted without any motion,

Senator Kinsella tells us that the comments accompanying the report will have no chance whatsoever of being considered.

I do not agree with this, because all honourable senators present during the debate at third reading stage will certainly have the opportunity to consider the comments accompanying this report.

• (2130)

The act of moving on to third reading does not mean we are to set aside the comments accompanying the report. I believe that the procedure that should be followed is the one set out in rule 97(4), namely that the bill has been reported without amendment and we need to move on to third reading.

[English]

The Hon. the Speaker: Does any other honourable senator wish to comment?

Honourable senators, the matter seems reasonably straightforward but I would like to take at least a few minutes to consider my ruling. Accordingly, I will leave the Chair in favour of the Speaker *pro tempore* and hopefully return shortly with an answer to the point of order put by Senator Kinsella.

In the meantime, please proceed with Orders of the Day.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to deal first with Item No. 7, second reading of Bill C-44, and then return to the Orders of the Day as proposed on the Order Paper.

AERONAUTICS ACT

BILL TO AMEND—SECOND READING

Hon. Aurélien Gill moved the second reading of Bill C-44, to amend the Aeronautics Act.

He said: Honourable senators, Bill C-44 has its origins in clause 5 of Bill C-42, the Public Safety Act.

[English]

Honourable senators, each country can decide which individuals it will allow within its borders. To make this decision, countries normally request information from those presenting themselves for admission, or at least verify the information presented in a passport or similar document. The United States is the first country to impose new data requirements on air carriers. I will use the United States as the example country for the remainder of my comments. However, I caution you that Bill C-44 is written to accommodate the requirement that foreign states be more broadly subject to the safeguards of the bill, not just the United States.

[Translation]

In this regard, the United States decided to request that certain basic information on passengers and crew members be communicated well before the flight's expected time of arrival in the United States.

In addition, on an individual basis, the United States will be able to request more detailed information, collected under the heading "passenger file."

As the American legislation requires the new data gathering program be in effect on January 18, 2002, the provision intended to allow Canadian carriers to comply is contained in its own bill, Bill C-44, to permit quick action and compliance with the date.

Honourable senators, Bill C-44 is optional. It imposes no measures on anyone and does not commit the Government of Canada to gather information for communication to the U.S. government. Instead, it allows carriers to provide certain information to a competent authority of the United States within a specified period.

I was pleased to learn, in my briefings, that the Privacy Commissioner had seen the provisions of Bill C-44 as originally proposed and had made certain recommendations to the Minister of Transport.

Following these consultations, an amendment was presented during the review in committee in the other place, and I understand that the Privacy Commissioner gave his support to the amended bill. This amendment does not seek to give new powers to government institutions for the gathering of information on passengers. Ours is a complex and effective

legislative system to manage the collection, use and disclosure of personal information in compliance with Canadian values.

The sole purpose of this amendment is to maintain this system and the values that it promotes. This amendment does not seek to restrict government institutions in the collection of information on passengers when such collection is authorized under the act.

Honourable senators, we were asked to proceed quickly. The fact is that the Americans do not need us to pass this legislation. They are prepared to conduct long manual searches of all carry-on and checked baggage that arrives in the United States to follow up on their legitimate concern to ensure the safety of their system, which was at the centre of that unbelievable tragedy. As far as we are concerned, this is not only a matter of speeding things up for our fellow citizens who travel to the United States for leisure or business, which is good for both economies, but also a matter of international cooperation to identify and deter terrorists.

[English]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I certainly appreciate the government's eagerness to get this bill passed as rapidly as possible, and we will not stand in its way at this stage. However, I would like to ask that consideration be given to two or three suggestions. One is that when the committee calls a meeting to assess the bill, it not do so without making sure that all those interested on this side can attend the meeting, unless it is scheduled in the committee's regular time slot. I say that because, right now, we on this side are pressured to not only do double duty but, in many cases, triple duty. We would like a little comprehension on the government side for that concern in order to allow us to give all bills, in committee and in the chamber, the evaluation they deserve.

Second, I am a little concerned about the government's position on this bill because, according to a report from the Canadian Press, "the federal government's controversial air passenger information legislation passed third reading in the Commons even as the government continued efforts to clarify its meaning." There is still some difficulty in the government explaining what exactly the United States wants in terms of information, how much of that information could be made public, and how much of it we would think, despite the Privacy Commissioner's assurances, can remain private.

If honourable senators read the law that was passed by Congress and signed by the President, not only does it require name, address, sex, passport number and so on, but also other information which is not specified. What does that mean? Does it mean dietary requirements, place of birth in the case of a naturalized citizen, the name of your parents, your maiden name? It can go on forever. We must be very careful before we rubber-stamp this bill to make sure that the information to be given is basic information and not information that can be used for purposes other than that for which it is required, meaning security.

• (2140)

Whatever assurances the Privacy Commissioner may give us, there is really little or no privacy left in this world. Let us not kid ourselves: As soon as information is entered into a computer or is written on a piece of paper, it becomes public information. It is as simple as that. At least we must make every possible effort to restrict the divulgence of information given to a first party, otherwise, once that is done, other parties can have access to it.

Our first concern is to ensure that when the committee meets, it is done in consultation on this side so that all of our members of the committee can attend. Our second concern is to ensure that the minister be there to defend his bill, and that he has the information that we require so that when the bill comes back to us, we are not asked to pass it, even as the government continues efforts to clarify its meaning, as was allowed in the other place.

[Translation]

Hon. Laurier L. LaPierre: My question is for Senator Gill. I would like to know if the Government of Canada has an act similar to that of the United States, whereby airlines in the United States must provide all necessary information to the Canadian government on passengers arriving in Canada on board their chartered flights?

[English]

In other words, do we have the same system here or do we allow the Americans, again, to dictate to us?

[Translation]

Senator Gill: Honourable senators, if my information is correct, we do not have similar legislation to that of the United States. We have Bill C-44.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. senators: Agreed.

Motion agreed to and bill read a second time.

REFERRED TO COMMITTEE

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the third time?

On motion of Senator Gill, bill referred to the Standing Senate Committee on Transport and Communications.

AIR CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

The Hon. Fernand Robichaud (Deputy Leader of the Government) moved the third reading of Bill C-38, to amend the Air Canada Public Participation Act.

On motion of Senator Kinsella, for Senator Tkachuk, debate adjourned.

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 2001

THIRD READING

The Hon. Fernand Robichaud (Deputy Leader of the Government) moved the third reading of Bill C-40, to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect.

Motion agreed to and bill read third time and passed.

[English]

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. B. Alasdair Graham moved second reading of Bill C-35, to amend the Foreign Missions and International Organizations Act.

He said: Honourable senators, I rise to speak to Bill C-35, respecting the privileges and immunities of foreign missions and international organizations. This bill is sponsored by the Minister of Foreign Affairs. It received third reading in the other place on December 4, having been approved by the Standing Commons Committee on Foreign Affairs.

As the title indicates, Bill C-35 amends the Foreign Missions and International Organizations Act, which was enacted in Parliament in 1991. It will be helpful to keep in mind the function of the existing act when considering the amendments.

The existing legislation is the federal law that provides for the special legal status in Canada of representatives of foreign states and of international organizations. The act can be divided into two parts: The first one deals with the legal status of foreign missions to Canada, such as embassies, high commissions and consulates; the second deals with the legal status enjoyed by international organizations such as the United Nations or the International Civil Aviation Organization in Canada. It is this second aspect dealing with international organizations that is the main subject of the amendments contained in Bill C-35.

For centuries, international law has required the granting of special legal status, privileges and immunities to foreign diplomats and consuls to ensure that the representatives of a foreign state are not unduly influenced by the authority of the receiving state. During the past century, international law has developed special rules relating to the status of international organizations. As states began to conduct more and more of their international affairs in the context of multilateral organizations such as the United Nations, it came to be accepted that such activities gave rise to the same need for immunities that existed when the same issues were dealt with on a purely bilateral basis, through embassies.

The existing legislation takes the privileges and immunities of the United Nations, which is Schedule III of the act, as a model. It then permits the Governor in Council, by order, to grant similar privileges and immunities to any international organization. In 1991, the Foreign Mission and International Organizations Act amalgamated the pre-existing Diplomatic and Consular Privileges and Immunities Act and the Privileges and Immunities (International Organization) Act.

For many years following the Second World War, therefore, Parliament has given the Governor in Council the capacity, by order, to grant privileges and immunities to international organizations. Examples of orders that have been passed under the existing legislation or pre-existing acts include orders granting privileges and immunities to the United Nations, the International Civil Aviation Organization, the North Atlantic Fisheries Organization, the Commonwealth Secretariat, and many others. There was also an order passed for the 1988 G7 summit in Toronto and, of course, for the Halifax summit in 1995.

The main purpose of Bill C-35 is to modernize the part of the act governing the granting of privileges and immunities to international organizations and their international meetings. The bill will enable Canada to comply with our existing commitments under international treaties, as well as fix several technical inadequacies that have been detected since 1991.

Honourable senators, allow me to turn to the bill's core proposal, which is to amend the legislative definition of international organizations.

• (2150)

Several years ago, the Standing Joint Committee on the Scrutiny of Regulations adopted the formal view that the existing definition permits orders to be made under this act only for international organizations that are created by a treaty. This was despite the fact that orders had been made in the past for non-treaty based organizations. Therefore, we have the odd situation where, for example, the Sommet de la Francophonie is covered by the act as there is a treaty relating to L'Agence and la Francophonie in that case, but the Summit of the Americas and the G8 are not.

[Senator Graham]

The change to the definition of "international organization" makes it clear that Canada can grant privileges and immunities by order to the Organization for Security and Cooperation in Europe, the G8, and other international organizations that are not established by treaty but are integral to the conduct of Canada's international relations. This amendment reflects the development in the conduct of international relations over the last several years whereby international summits are held by non-treaty based international bodies such as the G8 or the G20. The amendments also represent a timely clarification, since Canada is scheduled to host the G8 summit in Canada in Kananaskis, Alberta in June of next year.

The proposal in this bill that has generated the most discussion adds a provision designed to codify the common law with respect to the powers of the RCMP in providing protection and security to international governmental conferences that are held in Canada. It should be noted that the government has agreed to an amendment that was proposed in the other place in the Standing Committee on Foreign Affairs and International Trade, making clear that the RCMP can enter cooperative arrangements with the provincial and municipal police in sharing the responsibilities for providing security measures.

The government is clear in its intention to give a statutory base to the powers exercised by the RCMP when providing security for the proper functioning of an intergovernmental conference, and when providing security and protection to persons attending the conferences, including internationally protected persons.

I want to emphasize, honourable senators, that the government has no intention of either broadening a police power or infringing on the lawful demonstration of protesters. The proposal reflects the authority that police already have in common law and in statute.

I would like to provide one of the reasons for proposing such a provision in this bill. Shortly after the Summit of the Americas held in Quebec City last spring, a court challenge was launched in the *Tremblay* case, alleging that the perimeter fence was an inappropriate security measure. The Quebec Superior Court held that the fence was authorized by law, and that it did not breach the Charter. Given that Canada will be hosting international summits in the future, the government considers it useful that this law be given a statutory basis. The amendment has been carefully drafted in light of the common law and statutory duties conferred on the police to keep the peace, to protect persons — including internationally protected persons — from harm and to protect persons engaged in lawful demonstration from unlawful interference.

Any security measures taken by the police will be subject to Charter scrutiny and must be justified as reasonable in the circumstances. In other words, any police measure that limits a Charter right, be it freedom of expression, freedom of assembly or whatever, must be justifiable in a free and democratic society.

Honourable senators, I should like to speak briefly about the proposal in this bill to clarify that the Order in Council for an international organization or meeting exclude the obligation to issue a minister's permit to allow entry to Canada of persons who fall within the inadmissible classes under the Immigration Act. If there is a concern that this will give easier access to Canada by criminals, I assure you that international organizations and their meetings will be subject to the careful screening procedures already in place, and that the regular consultation between the departments of Foreign Affairs, Citizenship and Immigration, CSIS and the RCMP will not be bypassed. An Order in Council for international organizations and their meetings provides for immunity from immigration restrictions, not from the immigration formalities.

I now wish to comment briefly on several of the other proposals under Bill C-35. This bill will allow the government to extend privileges and immunities to international inspectors who come to Canada on temporary duty in order to carry out inspections under the Chemical Weapons Convention and the Agreement with the Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization. The Chemical Weapons Convention requires that inspectors be granted diplomatic privileges and immunities similar to those accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations. For example, under the Chemical Weapons Convention, a team of inspectors should receive the exemption from customs duties when they import specialized technical equipment for their use in the conduct of their duties.

The problem is that neither the implementing legislation nor any other Canadian legal instrument can, at present, provide the privileges and immunities up to this level to these inspectors. As a temporary arrangement, privileges and immunities have been provided by an Order in Council that provides less extensive privileges and immunities. This means that Canada could be criticized as not being in full compliance with the treaties. Therefore, it is the government's obligation to resolve this situation as soon as possible, and this bill does just that.

The bill also enables us to grant privileges and immunities to permit missions accredited to international organizations, such as the International Civil Aviation Organization located in Montreal. The bill also provides a remedy to the specific situation where the Canada Customs and Revenue Agency can reimburse the goods and services tax to individual representatives of the International Civil Aviation Organization member states but not to the actual mission offices of member states accredited to that international organization. By enhancing our relationship with ICAO, these amendments will improve the ability of Montreal and other Canadian cities to service the headquarters of international organizations operating their headquarters in Canada.

I might note that, apart from the foreign policy reason for such efforts, there are significant economic benefits that such offices

bring with them. A 1988 study by the Group Secor commissioned by Montréal International estimates the economic return of international organizations located in the host city of Montreal to be approximately \$184 million net for 1997.

Montreal is not the only Canadian host city, of course, which benefits from the presence of international organizations. Vancouver hosts the Commonwealth of Learning Secretariat and Halifax hosts the North Atlantic Fisheries Organization.

Another amendment of a technical nature will clarify the law with respect to the importation of goods for foreign missions. The right of diplomatic and consular representatives to import goods for personal use, including alcohol, is provided under the Vienna Convention. However, an earlier federal statute, the Importation of Intoxicating Liquors Act, states that the exclusive right of importation of alcohol rests with the provinces. In light of this apparent conflict, it would be useful to clarify and emphasize that importation for the official use of foreign representatives falls under the Foreign Missions and International Organizations Act and not under the Importation of Intoxicating Liquors act.

The existing act provides that Canada can provide certain privileges and immunities to political subdivision offices of foreign states like Hong Kong on a reciprocal basis. Legal analysis has raised the issue of whether the provision under the act is sufficiently clear. The provision in question may be interpreted as requiring that Canada have a provincial office operating in the foreign state receiving privileges and immunities before Canada can extend privileges and immunities to an office of a subdivision of that foreign state in Canada. This interpretation would mean that privileges and immunities would have to be withdrawn from a foreign state political subdivision office if Canada does not have, or no longer has, a provincial office in that foreign state. As this is not an interpretation that reflects the original intent of the provision of this act governing the granting of privileges and immunities to political subdivisions, this bill would clarify and ensure that the federal government may extend privileges and immunities at a consular level to political subdivisions of a foreign state such as Hong Kong even if Canada does not presently have a provincial office in that foreign state.

• (2200)

With respect to countermeasures, Bill C-35 contains an amendment which will authorize the Minister of Foreign Affairs to make time-limited orders under the act that will provide the legal framework needed to authorize the detention of diplomatic goods in response to infringements of the Vienna Conventions by foreign states in the area of customs clearance. For example, the amendment would provide the Canada Customs and Revenue Agency with the necessary authority to detain the diplomatic goods of a foreign state mission whose government had chosen to improperly detain the diplomatic goods of our Canadian mission abroad.

A final amendment to this bill is to add a provision to the act to enable the government to issue certificates proving to courts the status of individuals, foreign missions or international organizations covered by the act. The authority to issue certificates of status already exists in common law. However, it would be useful to codify this common law authority in keeping with the federal government's approach of respecting both the civil and common legal traditions of Canada.

In conclusion, the bill to amend the Foreign Missions and International Organizations Act will allow Canada to live up to its international obligations to grant privileges and immunities to international organizations. The amendments will enable Canada to continue to safely host important international events and summits in Canada.

In clarifying the statute with respect to the granting of tax privileges to accredited missions of international organizations headquartered in Canada, the bill also enhances Canada's ability to host important international organizations such as the International Civil Aviation Organization.

This bill will be given careful scrutiny at the appropriate time by the Standing Senate Committee on Foreign Affairs. Honourable senators, I urge your support for this legislation.

On motion of Senator Stratton, debate adjourned.

[Translation]

CANADIAN COMMERCIAL CORPORATION ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette moved that Bill C-41, to Amend the Canadian Commercial Corporation Act be read the second time.

She said: Honourable senators, I am very pleased to have the opportunity to speak on second reading of Bill C-41, to Amend the Canadian Commercial Corporation Act.

I wish to take this opportunity to tell you about the corporation and the bill, and then address some of the specific issues raised during examination of the bill in the House in order to pre-empt those questions here in the Senate.

Honourable senators, as you may know, the corporation has served Canadian interests very well ever since it was first set up by the Government of Canada in 1946 to help with international rebuilding efforts following World War II. The corporation is especially well known for its role in supplying defence and aerospace requirements of other governments, especially the U.S. Department of Defense — its biggest customer.

With the signing of the Canada-U.S. bilateral treaty, the Defense Production Sharing Arrangement (DPSA) in 1956, the
[Senator Graham]

CCC became the official agency through which U.S. Department of Defense contracts were processed for the supply of Canadian goods and services to meet U.S. defence requirements.

In 1960, the CCC signed a similar agreement with the National Aeronautics and Space Administration (NASA) to accept contracts on the same basis as other U.S. government buyers. The CCC is continuing to play a key role on behalf of Canada as we respond to the demand for the goods and services needed to win the war against terrorism.

Honourable senators, the role of the CCC is not just about supplying defence-related material, however. It has a growing reputation today for its success in negotiating contracts to supply the non-defence procurement needs of the United States, governments of other countries, and international institutions such as the United Nations, and its related agencies.

Today, 30 per cent of CCC's business is in sectors like information and communication technology, environmental services, transportation and consumer goods, for example. There is significant potential to do much more in these non-defence areas of international public procurement markets. Annually, more than 30 per cent of its business is now being conducted in more than 30 countries in addition to the United States. The international public sector marketplace is huge. It is estimated to be in excess of \$5 billion U.S. annually. It holds tremendous potential for Canadian exporters, including for small and medium size exporters. The Corporation is an important instrument in the government's trade development agenda. It is a full participant in Team Canada Inc. and a valued partner of many Canadian companies in the international marketplace.

The Corporation supports Canadian exporters in three unique ways. It provides specialized international sales and contracting services; a government-backed contract performance guarantee on behalf of Canadian suppliers to foreign buyers; and access to commercial sources of funding for Canadian companies that need pre-shipment working capital to finance exports.

The Canadian Commercial Corporation provides exporters with a unique capability to access government procurement markets. It can help Canadian exporters do more business in the international marketplace. This is because CCC's backing, contacts and know-how translate into a significant advantage in identifying, qualifying for and winning new business in this competitive, specialized market. This role is important in fulfilling the government's objective of creating high quality jobs and spurring wealth creation here at home.

Honourable senators, we want to make sure that CCC has the tools and the operating structure it needs to help Canadian exporters exploit the significant opportunities that exist in the huge public procurement market. The CCC is finding its resources are being stretched and it needs new tools to do its work and enhance its services. This is why Bill C-41 is now before the Senate for consideration.

Bill C-41 updates the Canadian Commercial Corporation Act in order to make necessary changes to the Corporation's governance and operating procedures, as well as to give it new tools to serve the needs of Canadian exporters in a commercially responsible way.

The bill proposes three changes: separating the positions of chair of the board of directors and president of the Corporation; permitting the charging of fees for service on CCC's non-Defence Production Sharing Agreement (DPSA) business; and authorizing the Corporation to borrow funds in the commercial market.

As you can see, these amendments are very important not only to Canadian exporters, but also to the CCC as they will help the Corporation become more self sufficient and more commercially oriented.

While these changes may be essentially administrative and non-controversial, honourable senators, I would take this opportunity to pre-emptively address some of the concerns which I expect some of my colleagues in the Senate may have about the CCC.

Honourable senators, I think one of the first thoughts which might strike my colleagues is that the CCC is not well known. While this may be true relative to its higher profile sister crown financial institutions — the Export Development Corporation (EDC), and Business Development Bank (BDC) — the CCC is actually well known and appreciated amongst its key clientele in the aerospace and defence industry.

• (2210)

Last year, more than 1,700 exporters accessed CCC's services and it facilitated more than 5,500 contracts and amendments. This is not the records of an unknown crown corporation. Additionally, the CCC has a growing profile among companies in the non-defence sector which bodes well for its revenue generation prospect following implementation of its fee for service regime which will occur once this bill receives Royal Assent.

Honourable senators, given the high percentage of business it does with respect to facilitating exports on behalf of Canada's aerospace and defense industry, senators may wonder whether the CCC follows Canada's military exports controls policy. I can assure you that the CCC ensures that Canada's military export controls policy is followed as appropriate before facilitating a transaction on behalf of Canadian exporters.

Our military export controls policy applies to the export of all military equipment specifically designed for military use and includes a special inter-departmental consultation when a non-OECD country is the buyer. An export permit is not issued if the sale is to countries which pose a threat to Canada or its allies;

are involved in or under imminent threat of hostilities; or are under UN sanctions.

An export permit is also denied if a country has a persistent record of serious human rights abuses, unless there is no reasonable risk that the goods might be used against the civilian population.

As a crown corporation, wholly-owned by the Government of Canada, CCC is required to adhere to Canada's defence and trade policies and other international obligations. Given that we have just watched the bill to Amend the Export Development Act, Bill C-31, pass through these chambers, it is very likely that the senators will also be equally interested in the CCC's ability to reflect Canadian values on corporate social responsibility in their international transactions.

As a crown corporation, the CCC is responsible for monitoring Canadian government policies on human rights and sustainable development, and is required to adhere to Canadian obligations. We are satisfied that the Corporation adequately undertakes this responsibility, but we realize that more can be done. The government is working closely with CCC to develop a comprehensive strategy which will leverage the special influence the corporation can have in international transactions. The strategy will also build on what the corporation has already achieved.

In recognition of the importance of corporate social responsibility, the corporation has already taken some steps to integrate corporate social responsibility considerations into its operating environment. CCC officials are part of a government-wide group that is encouraging and facilitating dialogue with the private sector on promoting codes of socially responsible conduct. Additionally, consistent with its commitment to incorporate social responsibility, CCC contracts now include a clause prohibiting the use of bribes or unethical business practices in other countries.

In 1999, the CCC announced its sponsorship of an award for corporate social, ethical and environmental performance at the annual International Cooperation Awards. The award is presented to a company that exemplifies the following: has a corporate code of ethics, systematically integrates local community stakeholders in project decision making and builds appropriate community support systems into the design and implementation of a project in a developing country.

Furthermore, management has introduced an Environmental Review Framework for the review of capital projects deemed to have potential environmental impacts. CCC's Environmental Review Framework is patterned on the one originally adopted by the Export Development Corporation.

CCC officials are working with colleagues at home and abroad to make sure this policy reflects the leading practices of Canada and our international competitors.

In summary, honourable senators, it is essential that all public and private sector institutions evolve over time in order to remain relevant and effective. This is particularly the case with the Canadian Commercial Corporation, which operates in an ever-changing and highly competitive global marketplace. This legislation will ensure that the Corporation is responsive to the needs of Canadian exporters, particularly small and medium-sized enterprises.

Overall, the amendments contained in Bill C-41 will strengthen CCC's capacity to deliver the specialized services that have spelled success in export markets for thousands of Canadian companies and that have helped produce high quality employment for Canadians throughout the country for many years. I urge all senators to support it.

[English]

On motion of Senator Kinsella, for Senator Meighen, debate adjourned.

CLAIM SETTLEMENTS (ALBERTA AND SASKATCHEWAN) IMPLEMENTATION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Jack Wiebe moved second reading of Bill C-37, to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act.

He said: Honourable senators, I rise this evening to address you on second reading of Bill C-37, which is the Claim Settlements (Alberta and Saskatchewan) Implementations Act. Bill C-37 can perhaps best be described as another important step in the ongoing process of fulfilling Canada's historical obligations to Aboriginal people; obligations that in some cases date back more than a century. For this reason alone, it deserves our careful attention and, I believe, our full support.

While it is true that all stakeholders involved in this legislation, including the First Nations of Alberta and the First Nations of Saskatchewan, the Government of the Province of Saskatchewan and the Government of the Province of Alberta, endorse and support Bill C-37, it is important that I outline to you this evening some of the more pertinent factors of the bill.

By way of background, Bill C-37 arises out of specific commitments made to two First Nations in Alberta, the Alexander First Nation and the Loon River Cree First Nation. In 1998, these two First Nations signed treaty land entitlement settlement agreements with Canada and the Province of Alberta that included a pledge by Canada to recommend to Parliament legislation that would facilitate the process by which lands are added to reserves.

[Senator Hervieux-Payette]

Bill C-37 fulfils these commitments, honourable senators, but in another way, it does a great deal more. With the approval of First Nations and the affected provincial governments, this proposed legislation has been structured in such a way that it may benefit other claims settlements in both Alberta and Saskatchewan, including settlements that may be negotiated in the future.

I also wish to make it clear that the mechanisms and processes that would be established by Bill C-37, although innovative and forward-looking, are not completely new to Canada. In fact, this proposed legislation is patterned on Part 2 of Bill C-14, the Manitoba Claim Settlements Implementation Act, which was enacted by Parliament in October, 2000 to facilitate claim settlements in the Province of Manitoba.

● (2220)

To fully appreciate the need for this legislation, it is important to first understand the historical grievances that Canada is addressing in Alberta and in Saskatchewan, as well as the problems that are being encountered. The solutions proposed in Bill C-37 will then make, I am sure, a great deal of sense to you.

Between the years 1874 and 1906, Canada signed Treaties 4, 6, 7, 8 and 10 with First Nations in Alberta and in Saskatchewan. Regrettably, for one reason or another, many of the First Nations who signed or adhered to these treaties did not receive the amount of reserve land promised to them.

Understandably, this has been a source of anger and frustration among First Nations people in the two provinces. Long after these treaties were negotiated and signed in good faith, many of the affected communities are still waiting for their full land entitlement.

In fairness to the current government and to the Provinces of Alberta and Saskatchewan, a genuine effort has been made in recent years to resolve this historical injustice by providing additional reserve lands to First Nations with treaty land entitlements. Toward this end, a total of 36 First Nations in the two provinces have either signed individual treaty land entitlement settlement agreements or are covered by a broader framework agreement in the Province of Saskatchewan.

For the past several years, federal and provincial officials have been working closely with these First Nations to help select and purchase various parcels of land and to process these lands into reserve status. At the same time, federal officials have been doing this same type of work for 13 specific claim settlements in Alberta and Saskatchewan that include commitments to expanded reserve lands.

Some treaty lands and specific claim settlements agreements have been fully implemented to date, but as I noted earlier, many have not. In fact, 1 million hectares, in excess of 2.5 million acres, are yet to be added to reserves as a result of claim settlements in Alberta and Saskatchewan. Additional reserve expansion commitments are expected in the future, as more claims are settled.

What exactly is the problem? Why are settlements not being implemented more quickly? Quite simply, the processing of land into reserve status is mired in legal and technical problems. That brings me to the primary objective of Bill C-37, which is to facilitate that process.

This will be done in two ways. First, the current practice of conferring reserve status through an order from the Governor in Council will be replaced under this bill. This proposed legislation will empower the Minister of Indian Affairs and Northern Development to set apart as reserves any lands that are selected by Alberta and Saskatchewan First Nations under claims settlements. This authority will help shorten the time needed to approve additions to reserves and will avoid taxing the Order in Council process.

While the time required to obtain an order from the Governor in Council is sometimes not insignificant, a far more difficult issue is the need to accommodate existing third-party interests when processing land selections.

This is where Bill C-37 proposes the biggest changes and will have the greatest impacts in terms of expediting the process.

Although Canada has clear obligations to First Nations people, it must also respect the rights of third parties that have existing interests in lands that may be selected for additions to reserves. Existing third-party interests on any prospective reserve land must either be bought out and cancelled by agreement with the third party or accommodated in a manner that is acceptable to Canada, to the third party and to the First Nation involved. I know honourable senators will agree that this is a fair and responsible policy.

Let me, in summary, list the main elements of Bill C-37. It will empower the Minister of Indian Affairs and Northern Development, rather than the Governor in Council, to confer reserve status on lands. It will introduce better, more commercially certain ways to accommodate third-party interests during the addition to the reserve process. Though I have not alluded to this in my remarks thus far, the proposed legislation will make minor language amendments to the Manitoba Claim Settlements Implementation Act to improve the application of that legislation and keep it consistent with the similar provisions that will apply to claims settlements in Alberta and Saskatchewan. It will amend the Saskatchewan Treaty Land Entitlement Act to clarify which pre-reserve designation powers will apply in different circumstances in Saskatchewan and to deal with release issues surrounding provincial obligations that have been met stemming from the Natural Resources Transfer Agreement for the Province of Saskatchewan.

Honourable senators should also be aware of some of the things that Bill C-37 does not do. For example, it does not give effect to any treaty land entitlement or specific claim settlements

in Alberta or Saskatchewan. Nor does Bill C-37 affect in any way a First Nation's ability to tax on-reserve third-party interests. This proposed legislation does not provide for or permit the expropriation of land or third-party interests in that land for reserve creation purposes.

In other words, while the overriding objective is to facilitate the transfer of lands to reserve status, this bill also confirms and even enhances important principles of Canadian law that protect third-party interests.

I mentioned earlier that there is a strong consensus in Alberta and Saskatchewan that the new powers and processes set out in this bill will provide a solution to the delays in fulfilling claim settlement agreements in both provinces. In fact, all key stakeholders have endorsed this proposed legislation and advised the government that they wish to see it moved forward as quickly as possible.

As is the current practice, this bill was developed in close consultation with the affected First Nations, the Federation of Saskatchewan Indian Nations, treaty organizations in Alberta, and the provincial governments of Alberta and Saskatchewan. All parties were provided with drafts of the proposed legislation and their feedback resulted in several improvements to the bill. As well, the Treaty Land Entitlement Committee of Manitoba Inc. has endorsed the proposed amendments to the Manitoba Claim Settlements Implementation Act.

Honourable senators, it falls on us to take the next step to facilitate the resolution of long-standing grievances that have blemished Canada's relationship with First Nations in the provinces of Saskatchewan and Alberta. We have here a bill that meets everyone's needs. Bill C-37 will help Canada fulfil its historical obligations to First Nations people. It will foster economic development and create jobs in First Nations communities across Alberta and Saskatchewan. It will protect the rights of third parties that hold interests in lands to be added to the reserves.

Honourable senators, I urge your support of this very important piece of legislation.

On motion of Senator Kinsella, for Senator Johnson, debate adjourned.

POINT OF ORDER

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, before proceeding beyond Orders of the Day and other business, I will rule on the question raised earlier today by Senator Kinsella relating to the second report of the Special Committee of the Senate on the Subject Matter of Bill C-36.

I thank Senators Robichaud and Kinsella for their comments and their help with respect to whether the motion of Senator Carstairs that the bill be read the third time at the next sitting is in order, or whether it should be set down for third reading two days hence.

• (2230)

Honourable senators, the practice here has been that when a committee reports a bill without amendment, we immediately proceed to third reading. I refer you to Bill C-11, an immigration bill dealt with by the chamber on October 23 of this year. It was reported back with observations but without amendment, and it did proceed to third reading, as Senator Carstairs has moved with respect to Bill C-36. Another example dates from June 22 of last year, being Bill C-473, a bill dealing with electoral district names. It was treated in the same way.

An issue was raised by Senator Kinsella in terms of the comments creating a substantive part of the report which required additional time for preparation so that debate on those observations could be full and complete. Senator Robichaud pointed out that there is no impediment to using the observations in terms of debate at the third reading stage. Accordingly, I do not find that a compelling argument.

Going specifically to the rules, the rule that Senator Carstairs is relying on in making the motion to proceed to third reading, the committee on Bill C-36 having reported the bill without amendment, is rule 97(4):

When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

There is then the question of whether that rule or rule 97(5) would be applicable. That rule refers to a report that recommends amendments, which this committee report did not do. That particular rule refers to two previous rules, 57(1)(e) and 58(1)(g), one of which provides for one day's notice, the other for two days' notice. The question becomes whether rule 97(4) or 97(5) is applicable.

The question of the committee on Bill C-36 being a special committee was raised as a possible reason for the application of rule 97(5) and not 97(4). However, I believe that matter is resolved by the definition of "committee" in section 4(b)(i) of the rules, which defines "committee" as meaning, in part, a special committee.

Accordingly, honourable senators, I do not find the argument that the motion to proceed to third reading on one day's notice is anything but in order. That is my ruling, honourable senators.

[The Hon. the Speaker]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the adoption of the eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (amendments to the Rules—Senators indicted and subject to judicial proceedings) presented in the Senate on December 5, 2001.—(*Honourable Senator Nolin*).

Hon. Jack Austin: May I inquire of Senator Nolin when he will speak to this report?

The Hon. the Speaker: The motion to stand is not a debatable motion.

Is leave granted, honourable senators, for Senator Nolin to respond?

Hon. Senators: Agreed.

Hon. Pierre Claude Nolin: Probably this week.

Order Stands

[Translation]

TRANSPORT AND COMMUNICATIONS

BUDGET—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the tenth report of the Standing Senate Committee on Transport and Communications (*budget—Examination on issues facing the intercity busing industry*), presented in the Senate on December 6, 2001.—(*Honourable Senator Bacon*).

Senator Bacon moved the adoption of the report.

Motion agreed to and report adopted.

[English]

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:

That the Senate of Canada recommends that the Government of Canada recognize the date of August 15 as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(*Honourable Senator Bryden*).

Hon. John G. Bryden: Honourable senators, I rise to speak briefly on behalf of Senator Losier-Cool's motion that the Government of Canada recognize August 15 as the Fête nationale des Acadiens et Acadiennes. The contribution that has been made by the Acadian people to the province of New Brunswick is a great one in various aspects of the life of our province: in its public life, in its business life, in its culture, education, and throughout the fabric of our province. The uniqueness that is New Brunswick is very much because it is home to two groups of equal citizens: anglophones and francophones; Acadians and descendants of Loyalists, English, Scots and Irish, who were welcomed by our Aboriginal communities, a mixture which has since been leavened by somewhat of an influx of other cultures through recent immigration.

Much of the sizzle in the steak that is New Brunswick, the bouquet in our wine, the *joie de vivre*, is Acadian. The cohabitation in the home that is the Province of New Brunswick has enhanced the lives and the opportunities of both anglophones and Acadians. New Brunswick is the only officially bilingual province in Canada. Over time, that status has contributed huge advantage to the young people of New Brunswick of both anglophone parentage and francophone parentage in that there is great concern on the part of parents of both Acadians and of anglophones in New Brunswick that their children have the opportunity, through total immersion and second language training, to be able to speak well and understand well both of our official languages.

• (22:40)

The advantage that that gives to our citizens in a global economy is significant. There are a limited number of places, certainly in the developed world, and perhaps in the entire world, where one can speak both English and French and one or the other of those languages is not a second language in that country.

The advantage has been primarily to anglophones, but the advantage that has accrued to Acadians was most evident after the Acadian Congress a number of years ago when Acadians from all over the world came to the Province of New Brunswick. They were amazed at the institutions of Acadian culture, education, hospitals and social services that existed in that province. Acadians were proud of their status, their institutions and what they had accomplished. It was indicated to me by a number of people who were present and intimately connected with that event that many of the Acadians in New Brunswick found themselves the envy of Acadians elsewhere in the world.

Honourable senators, I should like to speak personally about why my family and I have a huge affection for the Acadian people and Acadians that are friends of ours. I live in a little piece of New Brunswick that is an island of anglophones in a sea of francophones. My family came as immigrants from Scotland in 1929. We lived in a place called Little Shemogue. We were the newcomers to a situation where by far the majority of people in our area were French-speaking and Acadian, and we were all dirt poor.

On many occasions my mother told this story to my five brothers and me. During the 1930s, my mother was very ill. As a matter of fact, it was believed that she was dying. There were no services then. A woman by the name of Marie Duguay came from Duguay's Point, which is probably 2.5 to 3 miles away from our farm, walked every day through the winter, snow, slush and spring mud of that country road to our house and sat by my mother's bed. She made tea and she sat with my mother every day for weeks and months. Every day, before she left, she would take my mother's hand and she would say, "You pray in your way and I will pray in my way, and God will not take you from your sons." My mother recovered. She never forgot that kindness, and she made very sure that her sons never forgot it, either.

Also at that time, there was a cooperative movement that started at Great Shemogue. Who started the cooperative movement? Father LeBlanc, the French Catholic priest of Shemogue, and the Scotsman, as my father was called. One was the president and one was the secretary, and they worked together to form this cooperative movement that helped to ease the poverty that existed during that time in our province and in our country.

When times were tough and we could not afford to pay the schoolteacher in Little Shemogue, we could not go to school there. However, we were allowed to walk the extra mile, which made it three miles, to Great Shemogue. We attended the Catholic school there that was run by teaching sisters. As a young boy, I remember a teaching sister bandaging the blister on my heel, which I got because the gum rubbers wore on the back of my foot as I walked to school in the spring. Those things are part of a person's fabric, and there are stories like this on both sides.

Honourable senators, I will finish by speaking about an event that occurred a couple of years ago. The conference of l'Organisation internationale de la Francophonie at Moncton, which was a huge success, was an example of the Acadians, the Province of New Brunswick and Canada being proud of having such a successful event. The director general of that event was Fernand Landry. The next summer, far too soon, he died. The Acadians lost a champion; I lost a best friend with whom, a week before his death, I had talked about the mysteries of life and death, the magic and eternity of love and hope, and the wonder of the lives that each of us, as sons of the province of New Brunswick and the nation of Canada, had had nurtured, and the country and province that had nurtured us both.

Honourable senators, the legacy of Marie Duguay, Fernand Landry and thousands of Acadians like them should be marked by making August 15 la Fête nationale des Acadiens et Acadiennes.

Hon. Senators: Hear, hear!

On motion of Senator LaPierre, debate adjourned.

• (2250)

INVIOABLE RIGHTS

INQUIRY—DEBATE ADJOURNED

Hon. Terry Stratton rose pursuant to notice of December 5, 2001:

That he will call the attention of the Senate to the fact that even in times of crisis or emergency, certain values and rights are to remain inviolate.

He said: Honourable senators, it gives me great pleasure to rise this evening to speak to the inquiry that I set down last week. I stated then that today I would call the attention of the Senate to the fact that, even in times of crisis or emergency, certain values and rights are to remain inviolate.

The timing of the commencement of the debate on this inquiry is especially noteworthy because, earlier this evening, the Special Committee on Bill C-36 presented its report, reporting Bill C-36, the government's so-called proposed anti-terrorism legislation, back from the committee unamended, except for observations.

When we think of the protection of civil rights or civil liberties, we usually turn our minds to countries that live under oppressive regimes. When we think of the application of the international covenants that protect human rights in the global community, we do not even contemplate how these covenants might be either applicable or relevant in Canada.

However, given Bill C-36 and its companion bill, Bill C-42, still in the House of Commons, it is time for us in Canada to take stock of the protection of civil liberties and the applicability of the various United Nations international covenants.

Our theme tonight, and as we continue the debate, will be that there are some human rights that are so precious that they cannot be derogated from by legislation even in the case of declared emergencies.

Therefore, in this time when we are faced with proposed legislation that could compromise these vital human rights, we must be ever vigilant to ensure they remain inviolate.

Honourable senators, those who speak after me will elaborate on those rights and the protections they affect.

Hon. Donald H. Oliver: Honourable senators, I wish to begin my remarks on this inquiry by thanking Honourable Senator Stratton for calling the attention of the Senate to the issue of human rights around the world. In the scheme of the way things worked on our side of the Senate, I was supposed to put this inquiry down last week, but I was unable to do so because I was attending IPU meetings in New York City. Meeting with

members of the Inter-Parliamentary Union from all over the world in New York was, indeed, a very moving event for me.

As honourable senators can imagine, with the devastation of September 11 just a few blocks from where we were meeting and the war in Afghanistan and the hostilities raging in the Middle East, the informal discussions certainly concentrated on the scourge of terrorism that seems to have invaded every aspect of the world we live in today.

Many of the countries present, Canada included, of course, are either updating existing laws that were designed to fight terrorism or are drafting entirely new laws to meet the sophistication of the terrorists at the beginning of the 21st century.

There is a view that if each country passes laws that are tough enough and insulates its borders from immigration or the acceptance of refugees, all will be well, or, at least, the awful acts of September 11 will not be visited upon such country.

Lost in most of this debate is the fact that anarchy and terrorism have always been with us. Lost in this debate, for the most part, is the realization that some human rights or civil liberties are so overarching, as already stated tonight by Senator Stratton, that they should never be diminished by any legislative response to terrorism.

I was particularly touched by a speech given by our Governor General, Adrienne Clarkson, at the awards ceremony for the Canadian Journalists for Free Expression on November 8. The theme of her speech was that people who believe the world changed on September 11 do not know their history, do not know the struggles of people over the centuries to be free, to govern themselves, to have a decent standard of living, and to be free from discrimination and persecution.

The struggle against evil did not begin on September 11, nor will it ever end. In that speech, she quoted from one of history's great freedom fighters, Aleksandr Solzhenitsyn, who said the following:

If only there were evil people somewhere, insidiously committing evil deeds, and it were necessary only to separate them from the rest of us and destroy them.

But the world does not work that way. The distinction between good and evil cuts across cultures, countries and human beings.

Therefore, it is with a sense of history that we must pause during this time when governments want to be seen to be acting to root out and to punish terrorists and to reflect on the true values of our society as they have been written down over the years. We must remember the rights and freedoms that have been fought for and which, from time to time, have been trampled upon by leaders or governments pursuing their own agendas at the expense of the freedom and rights of others.

The struggle to find the balance between the preservation of our freedoms while still equipping the agents of our government with sufficient tools to effectively combat terrorism has preoccupied all of us in Parliament for the past several weeks. Bill C-36, which is before us, and Bill C-42, which has yet to come to us, limit our rights.

In determining whether the limitations on these rights are proportional to the end being sought or, indeed, are valid at all, we have many international covenants that may be consulted.

The International Covenant on Civil and Political Rights makes it clear, in Article 4, that there are certain rights from which there can be no derogation, certain rights that, no matter what the circumstances, remain inviolate.

Article 4 states:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

• (2300)

Therefore, honourable senators, even in times of public emergency which may strike at the heart of the nation, laws cannot be passed that discriminate on the grounds of race, colour, sex, language, religion or social origin. This is the filter through which must pass both Bill C-36 and Bill C-42, as well as any other legislation brought forward by this government that is supposedly aimed at fighting terrorism but which, potentially, limits rights or discriminates on the basis of these protected grounds.

As well, clause 2 of Article 4 states that there can be no derogation from the rights set out in seven articles of the International Covenant on Civil and Political Rights. The articles that contain these inviolate rights deal with the right to life.

Article 6 (1) states that:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 deals with torture. It reads:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 8 prohibits slavery, slave trade and servitude.

Article 11 states that:

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 15 condemns retroactive criminal law — making an action criminal which, when originally done, was legal.

Article 16 states that:

Everyone shall have the right to recognition everywhere as a person before the law.

This ensures that, even in times of emergency, a government cannot treat someone as a non-person in law.

Finally in this list of rights that cannot be diminished under any circumstances is Article 18 by which:

Everyone shall have the right to freedom of thought, conscience and religion.

All of the articles that I have quoted contain rights so fundamental that they cannot be diminished, derogated from or taken away, even in times of declared public emergency.

In Canada, we are not living in a state of emergency, even though we are being asked to pass laws that give the police, government agencies and the government itself extraordinary powers. We must also realize, as we have been told, that these extraordinary powers will be with us for a very long time.

As we review Bill C-36, the anti-terrorism bill, this week, and Bill C-42, the public scrutiny bill, in the new year, we must be ever vigilant to ensure that the legislation is not only in compliance with the Charter of Rights and Freedoms but also, honourable senators, in conformity with our obligations under international human rights covenants.

Hon. A. Raynell Andreychuk: Honourable senators, 53 years ago today, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly. Today, being International Human Rights Day, provides us with a timely opportunity to give sober reflection to the state of human rights in our country.

The ongoing challenge of maintaining a just state of law in Canada belongs to all of us who live here. It is the responsibility of every Canadian to fight for the preservation of the rules of law that have been developed since the birth of our nation and to mobilize our greatest resistance against any attempt to undo the gains that we have made thus far. Every one of us must take on this great responsibility in order to ensure that each and every individual counts, and that each and every individual is valued as a human being worthy of dignity in our society and before the courts of Canada.

The Universal Declaration of Human Rights begins, in its preamble, by stating:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

In this way, the declaration underscores that recognition of the inherent dignity of all human beings, as well as our equal and inalienable rights, is the necessary vehicle that will bring us to a world of freedom, justice and peace.

During this moment of reflection on the state of human rights in Canada, we should ask ourselves where we stand now and what future challenges we will have to meet.

Canada plays an important leadership role in the field of human rights within the international community. As a representative democracy, we have given our leaders the responsibility to ensure that the state respects all rights that we believe to be inviolable. Through such mechanisms and instruments as our Parliament, our courts, our Constitution, civilian agencies that act as watch dogs and the like, we have built a system of checks and balances to ensure the respect of human right in Canada and to ensure that no one is above the law.

We have earned our commendable human rights reputation in Canada in part because we strive to guarantee that every individual who appears before the courts matters. Regardless of who the person is, or where they are from, all have the same rights before the law. The rule of law in Canada ensures that the rights of the minority are not unduly effaced by the will of the majority.

We have matured our criminal justice system over the years in a manner such that the paramount concern of the court is to find the delicate balance of meting out justice while respecting the rights of the accused. We have developed concepts of procedural fairness, due process and fundamental justice, all in an effort to ensure that the rights of the individual are not trammelled by the state when it seeks to redress a harm suffered by society.

In the context of criminal law, the Canadian Charter of Rights and Freedoms seeks to protect the individual from irreparable harm caused by actions of the state. Every day we are faced with the ever-present challenge of balancing a variety of competing forces within society. My right to liberty must be weighed against my right to security. Freedom of expression may offend society's right to be free from hate-mongering. The continual friction caused by the competing forces of individual rights and the will of the state is not lost in either the Universal Declaration or the Canadian Charter of Rights and Freedoms.

Article 30 of the Universal Declaration states that no group or person can invoke any right of the declaration that would permit

[Senator Andreychuk]

any activity or act aimed at the destruction of any of the rights and freedoms set out in its text. The Canadian Charter also recognizes that no right is absolute, and that a balance must be struck among the competing interests between state and citizen. It states in its first section that all Charter rights and freedoms may be derogated from, so long as such derogations can be demonstrably justified in a free and democratic society.

The Supreme Court of Canada, in the *Oakes* case, has elaborated a test whereby such interests of society are weighed in relation to the rights of the individual. The balance will tip in favour of society's interests if it can be proved that the law that allows for such derogation meets a pressing and substantial objective, and that the means employed to do so are rationally connected to the problem to be remedied, minimally impair the right that is being infringed and are proportional to the problem at hand.

In Canada, as anywhere else in the world, the health of our human rights depends on a constant diligence to attain a degree of proportionality when evaluating the competing interests of both the individual and the state. The state does not trump the individual. One right does not trump another.

As the members of the global village are drawn increasingly closer together through new technology, more efficient means of transportation and through an increased understanding of distance, new challenges inevitably come to the fore.

• (2310)

It is natural that we may feel overwhelmed by the new problems we face. In reaction to this, there seems to be a movement afoot in Canada that seeks to loosen the system of checks and balances in order to confront the seemingly overwhelming threats of today. Such a movement must be resisted. We must not be left with the legacy legislatively that legitimizes the exercise of power unfettered and unaccountable.

Where loss of individual rights occurs, it, the authority, must be held to account by scrutiny and vigilance from another body, namely, the legislative branch, or an independent body or the courts. In a democracy, one does not police oneself. The rule of law must incorporate not the use of power absolutely in a given situation, but the use of power fairly and justly on some objective test.

As William Pitt so astutely observed in 1783:

Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.

Any call to barter away certain fundamental human rights in exchange for security must be approached with great trepidation. Heed must be taken to the sober voices of people such as Nadine Strossen, President of the American Civil Liberties Union, who stated that her greatest fear is:

...that too many members of the public will embrace the government's call to give up some freedom in return for greater safety, only to find that they will have lost freedom without gaining safety.

Canadians have every right to seek a greater measure of security; however, we cannot trade away rights in exchange for greater security, for we will end up with neither. A sober reflection on the present point to which our country has arrived in the area of human rights is cause for celebration. On this Human Rights Day, we can set our accomplishments in striking a just balance between the rights of the individual and the collective interests of society. These gains could not have been arrived at without the dedication and commitment of those who

fought the hard-won battles that have brought us to where we are now.

Finally, we must maintain an unwavering commitment to continue to pursue to find the correct balance between the competing rights that every person can claim under the Universal Declaration of Human Rights.

I call on all senators in the coming days to carefully weigh what others have given us in this society.

On motion of senator Kinsella, debate adjourned.

The Senate adjourned until Tuesday, December 11, 2001, at 2 p.m.

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(HANSARD)

Tuesday, December 11, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Tuesday, December 11, 2001

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

FIFTY-THIRD ANNIVERSARY OF THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

Hon. Norman K. Atkins: Honourable senators, I rise today to address the issue of human rights on the fifty-third anniversary of the proclamation of the Universal Declaration of Human Rights. I wish to draw your attention in particular to Article 11 of the International Covenant on Economic and Social Rights. This article recognizes the right of everyone to an adequate standard of living for themselves and their families. This includes adequate food, clothing and housing, and the continuous improvement in living conditions.

Clause 2 of Article 11 goes on to state that signatory countries recognize the fundamental right of everyone to be free from hunger and to ensure the equitable distribution of world food supplies.

As stated in Article 5 of this same covenant, countries are not to limit any of these rights. Therefore, even in times when we feel threatened by the acts of terrorists, these rights to food, shelter and a reasonable standard of living are to remain inviolate.

Here in Canada, we are struggling to find the right balance in our legislation between the preservation of human rights and laws that allow us to prevent terrorist acts or, alternatively, to hunt down terrorists and bring them to justice. In trying to achieve this balance and in finding the resources to properly equip our military and our police forces, we must ensure that we address the needs of those at the lower end of the economic scale. Poverty, the lack of adequate shelter and improper nutrition hurt both individuals and Canada as a whole. Poverty compromises the realization of Canada's potential as an innovative, competitive and prosperous nation in the global community.

We, as legislators, must ensure that the balance always tips in the direction of the less fortunate in our society when we weigh our priorities in both legislation and resource spending. Our poor must be helped. They must not be ignored as we pursue the eradication of terrorism.

STANDING COMMITTEE ON HUMAN RIGHTS

Hon. A. Raynell Andreychuk: Honourable senators, I rise to draw to your attention a historical event that occurred yesterday. Not only was it the fifty-third anniversary of the Universal Declaration of Human Rights. As well, the Standing Senate Committee on Human Rights met yesterday in an open forum to adopt its first report.

Honourable senators will recall that the Standing Senate Committee on Human Rights was empowered to study the machinery of human rights and other issues. We began our work in June. We made the decision that we would not meet *in camera*, even for administrative purposes. We have heard from many Canadians and others about the significance of human rights and the need for parliamentary involvement in human rights.

Yesterday, December 10, the day dedicated to the Universal Declaration of Human Rights, the committee met to finalize its report. We hope to be able to submit that report in this chamber this week. I urge all honourable senators to read the recommendations of our report, which lay out areas that require our careful consideration. I hope that in this way senators, and members of the committee in particular, can contribute to the development and maturing of human rights in Canada.

[Translation]

MONTFORT HOSPITAL OF OTTAWA

DECISION OF ONTARIO COURT OF APPEAL

Hon. Marie-Paule Poulin: Honourable senators, last Friday a decision by the Ontario Court of Appeal marked a new milestone for Canada as far as the protection of minority language services in majority language communities is concerned. Yes, I am referring to the Montfort Hospital victory.

Honourable senators, let us place this battle for the survival of a respected and recognized hospital like Montfort in the socio-political context of Ontario. Let us bear in mind, honourable senators, that "nothing can be taken for granted."

For several years, there seems to have been restructuring, reorganization, consolidation going on. In other words, reduction, and this has led to the gradual erosion of French-language services in Ontario in all areas: health, education, radio, television, publications — I could go on.

It is incumbent upon us, honourable senators, the representatives of all regions of Canada, to ensure that the Senate makes use of the tools available to it to keep its finger on the pulse, to monitor the situation.

[English]

PRIME MINISTER'S OFFICE

INVITATION TO RIGHT HONOURABLE BRIAN MULRONEY TO
INVESTITURE OF NELSON MANDELA AS HONORARY CITIZEN

Hon. Consiglio Di Nino: Honourable senators, last week, the Leader of the Government in the Senate informed us that former Prime Minister Mulroney had been excluded from Nelson Mandela's citizenship ceremony because there was "no room at the inn." In the honourable senator's words, there was "limited space" in the Museum of Civilization — so limited, one is led to believe that an extra chair could not be found anywhere for Mr. Mulroney.

• (1410)

I also read Senator Robichaud's delayed answer on the same issue, where he informed us that the guest list was prepared by protocol officials. According to the officials, if Mr. Mulroney had expressed an interest, he would have been accommodated.

I must say that I am deeply disturbed by these comments, as I hope are all honourable senators.

More than any other international leader, it was Brian Mulroney who took a lead in the battle against apartheid. It was Brian Mulroney who stood fast against repeated and insistent attempts by many world leaders, including then President Reagan and Prime Minister Thatcher, to persuade him to soften his government's position. Nelson Mandela himself has acknowledged publicly that Mr. Mulroney was a major player in the long and hard battle that finally brought apartheid to a close. Yet, in spite of all of this, the Chrétien government did not see fit to invite him to the ceremony.

There was not enough room, we are told. It was the bureaucrats who made the decision, we are told. It is not room that was lacking, honourable senators, it is class.

Senator Kinsella: That is right — no class.

Senator Di Nino: It is a matter of class, honour and "savoir vivre."

Former Prime Minister Mulroney and a number of other eminent Canadians who fought the ugly apartheid regime should have been seated front-row-centre at the ceremony. Mr. Mulroney should not have been the victim of yet another instance of spite, vindictiveness and small-minded and petty, partisan politics.

Honourable senators, the government's decision to ignore Mr. Mulroney is a glaring example of how things should not be done. Former prime ministers of whatever political persuasion deserve to be treated respectfully and properly by succeeding

governments. I was embarrassed by what happened to Mr. Mulroney, as I believe were all Canadians.

Honourable senators, the ceremony for Mr. Mandela had nothing to do with the Liberal-Conservative rivalry. It was about Canada honouring a great man and the struggle that has been his life. Unfortunately, those unable to see beyond the end of their partisan noses thought otherwise.

Senator Kinsella: No class.

Senator Robichaud: We are not partisan on this side.

Senator Di Nino: Incapable of discerning the difference between national occasions and party politics, they slighted Mr. Mulroney and all Canadians because of what we can only assume was arrogance and small-mindedness. Honourable senators, I believe that, as a country, we are poorer for it.

Some Hon. Senators: Hear, hear!

THE SNOWBIRDS

Hon. Donald H. Oliver: Honourable senators, last summer I raised the issue of the safety of Canada's venerable Snowbirds. My concern arose from the recent problem of two Scottish jets that crashed while training for a London air show. My views were supported by Mr. Jasper Vanden Bos, the father of the last member of the Snowbird team killed during a training session. He stated after the London near-tragedy, "I think maybe they should quit."

Since their inception in 1971, five Snowbird pilots have met their deaths: four while flying or training in air shows and one in a motor vehicle accident after an air show. In fact, the incident in London was not the first one this year. In April, one of the squadrons Tudor aircraft skidded across a runway in Comox, British Columbia, after its landing gear collapsed.

Honourable senators, I was involved in several cross-country phone-in shows, and one captain who has worked on Tudor aircraft maintenance for more than 20 years said that the Snowbirds should be grounded because they are suffering from metal fatigue and that there could be a major catastrophe unless something were to be done about their condition.

It seems that my concerns did not fall on deaf ears because the *National Post* on Thursday, December 6, reported that one of Canada's most recognizable national symbols appears slated for major transformation. The Department of National Defence is taking steps to replace its aging fleet of Snowbirds. Tenders were called last week asking companies to price out a supply of aircraft for the Snowbirds for the future. One possible result of the tender is that the Snowbird complement could be reduced from nine to four planes. The newspaper article said that a turboprop plane, much slower and less spectacular than a jet, is one of the prime candidates to replace the Tudor aircraft.

Another weekend editorial said "Let the Snowbirds fly" and was a plea not to change from a jet to a prop plane because:

The effect would be to lessen the thrill and spectacle of the Snowbirds program. It would be a bit like asking members of the Royal Canadian Mounted Police Musical Ride to replicate their performance on burros."

Honourable senators, the editorial said that the effect of any overhaul of the Snowbirds should be to improve their equipment and enhance the thrills, but not to clip their wings. My concern is that the aging, dangerous Tudors not fly anymore but be replaced, so that the safety of pilots and Canadians will become the first and highest priority.

JOHN PETERS HUMPHREY

CONTRIBUTION TO UNITED NATIONS
UNIVERSAL DECLARATION OF HUMAN RIGHTS

Hon. Joseph A. Day: Honourable senators, we have heard many fine accolades in relation to the Universal Declaration of Human Rights, as yesterday was set aside as a day to remember that wonderful document. I would be remiss if I did not bring to the attention of honourable senators the name John Peters Humphrey when we discuss the declaration.

Mr. Humphrey was born in Hampton, New Brunswick. He grew up in that small town, attended Mount Allison University for a short while and graduated from McGill University. Mr. Humphrey was a professor of law at McGill when he received the invitation after the Second World War to work, at a new directorate in New York, on the Universal Declaration of Human Rights.

Mr. Mandela has referred to John Peters Humphrey as the father of international human rights.

Although the Nobel Peace Prize was given to someone else, it is now generally acknowledged that the author of the Universal Declaration of Human Rights was a Canadian and a New Brunswicker from Hampton, John Peters Humphrey. A group in Hampton is working hard to appropriately recognize the work of John Peters Humphrey, who grew up there and died there.

The Hon. the Speaker: Honourable senators, I regret to advise that the 15 minutes for Senators' Statements have expired.

[Translation]

ROUTINE PROCEEDINGS

BUDGET 2001

DOCUMENTS TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, pursuant to rule 28(3), I

[Senator Oliver]

have the honour to table in both official languages the documents relating to the Budget 2001, which was presented yesterday in the House of Commons.

[English]

● (1420)

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET—STUDY ON STATE OF HEALTH CARE SYSTEM— REPORT OF COMMITTEE PRESENTED

Hon. Marjory LeBreton, Deputy Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, December 11, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

TENTH REPORT

Your Committee was authorized by the Senate on March 1, 2001, to examine and report upon the state of the health care system in Canada.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of April 24, 2001. On May 16, 2001, the Senate approved the release of \$5,000 to the Committee. The Senate subsequently approved the release of an additional \$278,000 to the Committee on June 13, 2001.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

MARJORY LEBRETON
Deputy Chair

(For text of appendix, see today's Journals of the Senate, Appendix "A", p. 1117.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator LeBreton, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

BUDGET—STUDY ON STATE OF FEDERAL GOVERNMENT POLICY
ON PRESERVATION AND PROMOTION OF CANADIAN
DISTINCTIVENESS—REPORT OF COMMITTEE PRESENTED

Hon. Marjory LeBreton, Deputy Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, December 11, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

ELEVENTH REPORT

Your Committee was authorized by the Senate on Tuesday, April 24, 2001, to examine and report upon the state of federal government policy relating to the preservation and promotion of a sense of community and national belonging in Canada.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of May 16, 2001. On June 13, 2001 the Senate approved the release of \$4,000 to the Committee.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

MARJORY LEBRETON
Deputy Chair

(For text of appendix, see today's *Journals of the Senate*, Appendix "B", p. 1118.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator LeBreton, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

COMPETITION ACT
COMPETITION TRIBUNAL ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-23, to amend the Competition Act and the Competition Tribunal Act.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

NATIONAL FINANCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND
DATE OF FINAL REPORT ON STUDY OF EFFECTIVENESS OF
PRESENT EQUALIZATION POLICY

Hon. Lowell Murray: Honourable senators, I move that on Wednesday next, December 12, 2001, I will move:

That the date for the presentation by the Standing Senate Committee on National Finance of the final report on its study on the effectiveness and possible improvements to the present equalization policy which was authorized by the Senate on June 12, 2001 be extended to February 26, 2002;

That the committee be permitted, notwithstanding the usual practices, to deposit its report with the Clerk of the Senate if the Senate is not then sitting and that the report be deemed to have been tabled in this Chamber.

[Translation]

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Lise Bacon: Honourable senators, with leave of the Senate and notwithstanding rule 58(1(a), I move:

That the Standing Senate Committee on Transport and Communications have power to sit at 3:15 p.m. tomorrow, Wednesday, December 12, 2001, for its study of Bill C-44, to amend the Aeronautics Act, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

[English]

Hon. John Lynch-Staunton, (Leader of the Opposition): Will the honourable senator please explain?

Senator Bacon: If I remember well, the Leader of the Opposition requested that the minister appear before our committee. He will be appearing tomorrow at 3:15. I invite the honourable Senator Lynch-Staunton to join us if he wishes. The Privacy Commissioner will be there, also.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

NATIONAL DEFENCE

PROPOSAL TO DOUBLE SIZE OF JOINT TASK FORCE 2

Hon. J. Michael Forrestall: Honourable senators, I have a question for the Leader of the Government in the Senate and a couple of brief supplementary questions.

Along with many others, I was somewhat puzzled and might ask the minister: What does the government mean when it states that it will "double the capacity" of Joint Task Force 2 over a period of five years? Does that mean an increase in the size from more or less 250 to, perhaps, more or less 500? Or does it mean something else?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it means that the intention is to double the size, and also to ensure that the increased numbers are appropriately equipped to meet the needs to fight anti-terrorism.

Senator Forrestall: Another non-answer.

How can the government propose doubling the capacity of JTF 2 when the army commander recently expressed plans to eliminate one brigade worth of troops or three light battalions?

Senator Carstairs: Honourable senators, first, let me take issue with the honourable senator's introductory remark, "another non-answer." He asked me if it would double the numbers. I told him it would double the numbers. It seems to be as clear a reply as any one can give to any one.

In terms of the other statements the honourable senator made, the honourable senator well knows that while there have been discussions, no decision has been made about the disbanding of any brigades or any battalions.

Senator Forrestall: Honourable senators, if you do not have any money, you are not able to operate very well. That is fairly obvious, or do we have to wait until next spring?

THE BUDGET—ADEQUACY OF ADDITIONAL ALLOCATION

Hon. J. Michael Forrestall: What units and/or military capabilities is the government planning on reducing or even eliminating from the Canadian Forces to accommodate this disastrous budget?

Senator Carstairs: First, I do not agree that it has been a disastrous budget. I think it has been a positive budget, unlike the statement of the honourable senator last night. In fact, the government is not spending \$300 million to purchase new equipment over two years. It is spending \$300 million this year, so the increase is substantial.

• (1430)

There have also been substantial increases from 1999 cumulatively, including the budget of 2001, of \$5.1 billion. That is a substantial increase, honourable senators. Perhaps the honourable senator does not think \$5.1 billion is a lot of money but the Canadian public certainly does.

Senator Forrestall: Honourable senators, I thought I was all finished. One of us must go back and reread what is being said. I have a statement I wanted to make earlier in which I refer to at least 12 people who are in a position to comment with credibility on the impact of this budget. Every one of them lamented the lack of support for the Canadian Armed Forces.

I would ask the minister if I misread it so badly. It was my understanding that the Auditor General indicated, as have a number of other Canadians who have knowledge in this area, that the requirement was \$1.3 billion annually on top of current dollars just to stay abreast of where we were in 1994. Is that incorrect?

Senator Carstairs: Honourable senators, the Auditor General has made a number of statements about the need to increase the capacity of the Department of National Defence. Those remarks have clearly been taken seriously by the government. That is why this budget is providing an additional \$1.2 billion.

Senator Forrestall: That is absolutely incredible.

SPEECH FROM THE THRONE

PROMISE OF EARLY CHILDHOOD DEVELOPMENT INITIATIVE

Hon. Marjory LeBreton: Honourable senators, the government promised in the Speech from the Throne that they would invest more than \$2 billion over five years in the Early Childhood Development Initiative to expand and improve access to services for all families and children. We are now entering the second year of the government's mandate, and I should like to ask the Leader of the Government in the Senate: When will we hear details of this announcement that was contained in the Speech from the Throne?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, there have been a number of initiatives in this budget, particularly focused on Aboriginal children. New moneys have been provided for additional Head Start programs, additional money for those suffering from foetal alcohol syndrome, both FAS and FAE children, and also \$25 million has been targeted specifically to newborns so that we can, hopefully, get them set on the right track immediately.

The government is progressing with its agenda on childhood development, both through specific programming and tax cuts that specifically address parents with children.

Senator LeBreton: That certainly leaves out a lot of children.

Honourable senators, in this budget the government has designated \$7.7 billion for security, \$60 million for CBC, another \$2 billion for yet another foundation where taxpayers' dollars can be spent without accountability; and they have not followed through on their promise to children made in the Speech from the Throne. I should like to know why this government is not dealing with the welfare of children and why it is that these issues are being put on the back burner?

Senator Carstairs: Honourable senators, they have not been put on the back burner. Most Canadians would recognize that the children in greatest need in this country are children who are living in reserve and off-reserve communities. That is why additional spending has been specifically targeted to those children. The Child Tax Credit and the additional tax reductions across the board, which amount to about some \$100 billion, address the needs of families. Families, of course, are part and parcel of the care group that looks after children.

Senator LeBreton: Honourable senators, I would suggest, with all due respect to the Leader of the Government in the Senate, that she should simply drive around most cities in this country, the large, urban, downtown centres, and she will really see children in need and in trouble. I do not think those issues are being addressed at all.

Senator Carstairs: Honourable senators, I significantly agree with the honourable senator's statement that there are children in need in many communities within the Canadian mosaic. Of that there is no question. That is why this government takes considerable pride in the fact that the poverty rate among children has been reduced. It has not reached the point where we can frankly say that enough has been done, but it is going down.

TRANSPORT

THE BUDGET—AIR TRAVELLERS SECURITY CHARGE

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It deals with yesterday's budget. In particular, I should like to ask a question about the new air travellers security charge that will be paid by air travellers starting April 1, 2002.

The new air travellers tax is an additional \$24 for domestic return flights and \$48 for international return flights. On top of this new tax, travellers will also be forced to pay GST. With Canadian airlines already in financial difficulty, this new tax, being passed off to the airline industry and travellers, will represent a significant increase in the actual cost of flying.

Will the Leader of the Government tell us whether or not it is the government's position that introducing this new tax along with GST is good for business in Canada?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the appropriateness of this tax or charge, if you will, on air travellers is based on the principle that those who

need to feel secure in our airports and who need to know that they will have the greatest amount of security possible when they get on board a plane should, my mind and in the mind of the government, bear that cost.

Senator Oliver: Honourable senators, this government's record on the principle of user fees and user-pay has received criticism and the attention of the Auditor General. In past reports dealing with user fees, particularly those the government introduced in the agriculture and agri-food industry, the Auditor General raised serious concerns about how this government manages user fees and the revenue it derives from them.

My supplementary question to the Leader of the Government in the Senate is this: Why did the government not give adequate consideration to funding its air security measures from its surplus? Why is this government so determined to introduce a new tax on air travellers and the airline industry?

Senator Carstairs: Honourable senators, there is a simple reason. It was considered appropriate that the people who are using the airplanes should in fact pay the fee.

ORDERS OF THE DAY

POINT OF ORDER

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I rise on a point of order. The point of order is to underline a disorder that occurred last night. This issue is not normally raised publicly but it is, to my mind, just the latest in a series of events that confirms that the Senate is going down a slippery slope, where, if not halted, our views, our processes and our action will be either taken for granted by this government or will just be deemed irrelevant.

If such is the case, honourable senators, if that is to be the situation, then it is up to all of us in the Senate to protect the integrity of this place and for His Honour, as Speaker here, to play a role in leading us in that direction.

Last evening, immediately after the Senate agreed to send Bill C-44 to the Transport Committee, a fax arrived in the offices of the members of the committee setting out a complete schedule for that committee including the names of the witnesses who would appear at a meeting scheduled for this morning at 9:30.

How is it that the work of the Senate was so clearly anticipated by the Senate committees branch? I understand it may be appropriate to contemplate the receipt of legislation by a committee, but to proceed to call and book witnesses for a meeting while a bill is still at second reading anticipates the work of this place to a degree with which I cannot agree, no matter the urgency of the legislation.

That said, if the argument were urgency alone, I would not be raising the issue. However, it does not end there. According to our journals we adjourned at 11:14 p.m. At approximately 11:30 p.m., an envelope arrived in my office and, I assume, in the offices of all members of the committee, containing what was described as briefing material for this morning's committee meeting. It contained a briefing binder which is entitled, "Bill C-44, An Act to Amend the Aeronautics Act, Standing Committee on Transport and Government Operations, Clause Review Binder."

As far as I know, we do not have a Standing Committee on Transport and Government Operations.

Senator Forrestall: Oh, yes we do.

• (1440)

Senator Lynch-Staunton: The other place does. As for the Senate briefing material for the proper assessment of a bill passed by the House of Commons, we were sent material given to the House of Commons committee during its study of the bill. Worse than that, not only did we get their binder, but in the binder is a copy of the bill at first reading. The bill does not even include the amendment that was passed. A copy of the amendment is attached, but the bill as passed by the House of Commons is not included in the briefing material. There is then a clause analysis prior to the amendment. There is no explanation here as to the purpose of the amendment. There is other material that is more relevant.

The point is that the material received was prepared for the House of Commons, and the Department of Transport did not think that the work of the Senate was important enough that it should update the material and prepare a proper cover to show that it was directed to members of our committee, at least out of respect for the work that the committee intended to do.

Senator Kinsella: Keep the bill until March!

Senator Lynch-Staunton: Added to that was some material prepared by the Parliamentary Research Branch of the Library of Parliament. One is entitled "Subject: Bill C-44," and then mentions various witnesses. It then reads "Meeting: 11 December 2001." It was prepared on December 5. Inside are suggested questions to the witnesses who appeared this morning.

By December 5, someone had instructed the Parliamentary Research Branch to prepare questions for certain witnesses to appear in front of our committee on December 11. On December 5, the bill had yet to be passed by the House of Commons. There was work being done without any regard to what would happen in this place. It was obviously decided by someone, somewhere some time ago that the meeting of the

Senate committee on Bill C-44 would take place on December 11.

Honourable senators, I am not pointing the finger at the Library of Parliament. I am pointing the finger at those who take us for granted to the point that they decide when we will do something and, I suppose, what we are to do. The question is this: Is the government managing the legislative agenda to the point where it is now dictating to parliamentary staff when and at what pace legislation will proceed even while it is still in the other place?

Honourable senators, as I mentioned, if this were an isolated case, I would not have raised the matter. However, in the last Parliament, senators will remember that Bill C-20, the clarity bill, expressly left the Senate out of its operations in relation to the breakup of this country. Honourable Senator Joyal and others pointed out that this was just one example of the Senate being eliminated from participating in the parliamentary process of reviewing a bill.

In this Parliament, the Minister for Citizenship and Immigration has admitted to applying parts of Bill C-11 even before the bill was given Royal Assent. She said explicitly that she was not concerned that the bill had yet to be approved by Parliament.

Senators will recall that recently another bill had to go through a convoluted process in the Senate because we received two versions in an improper form, as if we were to accept a bill that did not include all that the House of Commons intended to include.

Honourable senators will also recall that one speech was given here by the sponsor of a bill that was word for word the same speech given by the sponsor in the House of Commons. Only two weeks ago, the sponsor of a bill here also gave a speech that was word for word the same speech as given by the sponsor in the House of Commons.

Senator Di Nino: Coincidence?

Senator Lynch-Staunton: Honourable senators, we are not a recycling bin for the House of Commons. We are not a blue box.

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: Honourable senators, having said that, I would ask His Honour, in the responsibilities that he has as spokesman for this place, to carry out a thorough investigation of the matters I have raised because I believe that they are symptomatic of a malaise that has slowly crept into this place and, if allowed to continue unchecked, will push us even further down that slippery slope to irrelevance. I will be pleased to provide any material in support of my concerns at His Honour's convenience.

Hon. Sharon Carstairs (Leader of the Government):

Honourable senators, while I do not agree that the honourable senator has a point of order, I do agree with much of what he has had to say in that I would state in the loudest possible terms that I do not think we should be the recycling bin of the House of Commons either, whether it is a blue box or a black box or any other kind of box.

However, honourable senators, there is no question that in Bill C-44 we are dealing with a very important piece of legislation — a very narrow and limited piece of legislation. It was hived off, if you will, from the large matter of Bill C-42, the public safety bill, because the Americans passed an order stating that if they did not receive certain advance information on passengers entering their air space, then they could institute certain difficulties for those individuals. That debate will take place.

The bill was sent to committee last night. Committee members would have been, I would suggest, very upset if they had received no briefing materials prior to their meeting this morning. It is true that those briefing materials, with a bit more care and concern about the chamber, could have been tailored so that they reflected only the Senate of Canada. They were not.

It is fair to say that we were not sure when the bill would be referred to committee. I was not sure and therefore could not give a signal that the bill was to go into committee this morning.

The reality, however, is that had we not been prepared to have witnesses for today, had we not been prepared to provide briefing materials for honourable senators — albeit not as finely tuned as I would like them to be — then honourable senators would not have been prepared to deal with the witnesses that they heard this morning.

The concerns that Honourable Senator Lynch-Staunton has addressed this afternoon are concerns that I suspect he will not be surprised to hear that I address at practically every meeting of cabinet when I give the Senate report. I indicate that there is a second chamber, that we do function as a second chamber and that we have all of the powers, with the exception of some limited constitutional powers, of the other place. I indicate as well that we deserve and should be given the respect at all times of being the second chamber, the upper chamber in this Parliament of Canada. I must say that sometimes I do not believe that my words are received with the warmth and graciousness that I would like, but I have seen some significant changes in a positive way. I can assure the Honourable Senator Lynch-Staunton that I will soldier on.

[Translation]

Hon. Lise Bacon: Honourable senators, over the weekend, out of a concern for efficiency, I contacted the chair of the committee. All decisions are made in the priorities committee. The Leader of the Government has said so. I am used to working

with the senators on the Transport and Communications Committee. I know they want to be well informed and to have the documents they need to do their job. Had we had to sit this morning, we would have had to send the documentation to the senators on the Transport and Communications Committee out of a concern for efficiency.

As to the document that is for use by the House of Commons only, I entirely agree with the Leader of the Opposition. In the future, we will try to insist on Senate use documents only before we meet.

[English]

The Hon. the Speaker: Do any other senators wish to comment on this point of order?

Hon. Anne C. Cools: Honourable senators, I should like to contribute to the debate briefly.

• (1450)

The Honourable Senator Lynch-Staunton has raised an important question. I also think that the Honourable Senator Carstairs has been forthright and candid. The question before us is whether there is a point of order on the narrow point or whether there is a wider issue and a larger question at hand that needs to be addressed.

I listened with some care to what Senator Lynch-Staunton had to say. He itemized a series of incidents that we are all mindful of because they happened here. His narration was factually and historically accurate. However, it is becoming increasingly clear to all of us that something must be done. Somehow or other there needs to be a debate, a study or a meeting of the minds, because it becomes clear that certain members of the government seem to view the Senate as a department of government. In other words, they look upon the Senate as a ministry itself.

As a matter of fact, just a couple of days ago I heard someone describe Senator Carstairs as the minister for the Senate. I found myself trying to explain that she is not the minister for the Senate, she is a minister in the cabinet who is the Leader of the Government in the Senate.

The point of view that seems to be held strongly by many members of the government, and many members of the other place, is that the Senate is a department and that Senator Carstairs is its minister. It seems to me that perhaps a better way to deal with this is to have a Senate committee actually study the current relationships among the executive, the government and the Senate and among the government and both Houses of Parliament. It is well known that the principle is that the Senate and the House of Commons, as with the cabinet, are coordinate institutions of the Constitution; the Senate is not a subordinate body to the House of Commons, to the government or to the cabinet.

I wanted to make those brief remarks, namely, that it is abundantly clear that some insight and study is needed on this matter and on this question because these incidents are being repeated a little too often and are coming a bit too fast and furiously to be excused.

Honourable senators, I propose that a committee, or the chamber as a whole, attempt a study of the issue. We could call it a study on the question of constitutional comity among the Senate, the House of Commons and the executive.

The Hon. the Speaker: If no other senator wishes to comment on the point of order raised by Honourable Senator Lynch-Staunton, I shall advise the chamber that, having listened to the presentations, I find that there some interesting questions were raised as to whether an order has been followed in this chamber, perhaps in a committee of this chamber. There was a broader discussion and I believe that it is deserving of more time than a ruling from the chair permits. Accordingly, I shall take it under advice and report back as soon as I can.

AIR CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-38, to amend the Air Canada Public Participation Act.

Hon. Noël Kinsella (Deputy Leader of the Opposition): Honourable senators, I think we have completed our study of Bill C-38. While we have supported and do support the increased limit on foreign investment for Air Canada, a number of concerns remain.

Globally speaking, we are concerned with the piecemeal approach taken by the government to what is a much larger problem. The day must be faced when we look at the overall picture. Honourable senators on this side believe that the government should be providing a coherent framework in response to what clearly is a looming crisis that may very well fall on the backs of Canadian taxpayers. We would like to see the government's contingency plan in the event that the approach that underlies Bill C-38 fails. If it does not work or if it fails, is there a contingency plan in place to attract the investment that will be required to keep Air Canada flying?

We register these remarks for the record, but we will agree to the adoption of the bill at third reading.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

ANTI-TERRORISM BILL

THIRD READING—DEBATE ADJOURNED

Hon. Sharon Carstairs (Leader of the Government) moved the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

She said: Honourable senators, September 11 forced Canadians to acknowledge and address the terrible reality of terrorism and the threat it poses. That day, terrorism struck down thousands of innocent civilians of many nationalities, religions and ethnic origins who simply were on an airplane, at work or going to work.

The enormity of the horror and the common everyday activities that, suddenly, we are vulnerable targets forced the Government of Canada and governments around the world to take a hard look at criminal law and the tools available to law enforcement and security agencies, testing them against the need to protect Canadians from the threat.

As Professor Errol Mendes of the Faculty of Law of the University of Ottawa told our special Senate committee last week, we in North America entered new territory on September 11, "the territory between crime and war." The new paradigm, as Professor Mendes referred to it, demands a new response. As he said:

In this new paradigm we have to use all our knowledge and all our wisdom to try to meet the challenge of this new paradigm, without allowing it to overwhelm our fundamental values of human rights, equality and multiculturalism.

Honourable senators, the drafters of this bill, members of the other place and honourable senators in this chamber have worked very hard to make sure that this bill meets the challenge, so that it provides the tools our law enforcement and security agencies need to protect Canadians from terrorism without relinquishing the fundamental rights and freedoms that define us as a nation.

• (1500)

Honourable senators have reason to be particularly proud of their contribution to this process. As a result of the work of the special Senate committee during the pre-study, significant changes were made to the bill, changes that enhance the safeguards in the bill and strengthen our ability as parliamentarians to review how the powers are being exercised.

I wish to thank members of the special Senate committee, those who served during its pre-study and those who came on board for the clause-by-clause study. I especially wish to thank the chair of the committee, Senator Fairbairn, and the deputy chair, Senator Kelleher, for their first-rate work.

Hon. Senators: Hear, hear!

Senator Carstairs: This is another example of the important contribution that this body makes to Canadian legislation.

As I explained when I began the second reading debate of Bill C-36, our current law is focused on addressing criminal activity after it has taken place. We have laws on the books now to prosecute and convict terrorists and others who hijack airplanes or murder innocent civilians. However, that is not good enough. We need to be able to stop terrorists before they get on airplanes. We need to be able to dismantle the networks on which terrorists rely for money, training, false documents and, above all, refuge. Criminal sentences, however harsh, are unlikely to deter suicide bombers, honourable senators. We need another way and that is what Bill C-36 provides.

Bill C-36 is directed at the way terrorists work. Terrorist networks are complex structures with carefully separated functions. One group or terrorist cell will have certain responsibilities, such as obtaining documents or providing certain skilled training critical to the ultimate success of the mission. However, while the members of the cell know that they are working to help a terrorist group carry out a terrorist activity, they will, in all likelihood, deliberately not know what the mission is, when it will be carried out or where.

Our present law was designed for a different world, honourable senators. Traditional criminal law requires that an offender must have knowledge or foresight of each factual element of the offence. This means that one cannot charge a member of a terrorist cell with aiding and abetting the commission of the terrorist activity unless they know all the details of the terrorist activity they are helping. This does not make sense for the new world of terrorism that rewards deliberate ignorance and leaves the network in place to kill again.

Bill C-36 would provide for the new criminal offence of facilitating a terrorist activity. Some witnesses who appeared last week before the special Senate committee studying the bill were concerned that the bill makes criminals of innocent Canadians through the invention of facilitation as an offence. Let me be very clear, honourable senators: The language of Bill C-36 has been carefully drafted precisely to ensure that no one could be convicted who innocently facilitates a terrorist activity. Indeed, changes were made in the other place specifically because of

such concerns expressed, among others, by our own special Senate committee in the pre-study report.

The innocent are fully protected under this bill, but it will now be possible to prosecute and convict the members of terrorist networks who know they are facilitating a terrorist activity, even though they do not know all of the details of that terrorist activity. Deliberate ignorance of details will not be a shield to protect these participants against the consequences of their actions.

Two of the more controversial powers in the bill also focus on the particular needs of preventing terrorist acts. These are the preventive arrest and investigative hearing provisions. Honourable senators, these powers, while not unprecedented in Canadian criminal law, are not usual in our system, but, then again, neither is terrorism.

As the Honourable Senator Bryden reminded committee members during the hearings on the bill, sometimes all it takes to prevent a terrorist act from taking place is to delay one person for a few minutes or a few hours.

We may never know the truth, honourable senators, but we are all aware of the news reports a few weeks back that suggested that an airplane scheduled to travel from Toronto to New York on the morning of September 11 may have been targeted by terrorists participating in the terrible plan for that day. That plane was delayed for a few minutes and those few minutes may — we will never know for sure — have saved thousands of lives.

The preventive arrest provisions are critical tools in the fight against terrorism. They are available only where a police officer believes, on reasonable grounds, that a terrorist activity will be carried out, and where he or she suspects, on reasonable grounds, that arresting this particular person is necessary to prevent that terrorist activity from being carried out.

Some honourable senators opposite have suggested that these provisions will permit a round-up of members of Canadian communities. I would suggest that that is simply wrong. The provisions of the bill are clear: The police officer must suspect and have reasonable grounds for that suspicion that the arrest of this person is necessary to prevent a terrorist activity from being carried out. This is neither more, nor less, than what we expect our justice system to permit.

Honourable senators, the bill has been drafted to carefully circumscribe these powers, with layers of safeguards to ensure that the powers are not abused. Unless there are exigent circumstances that demand immediate action, the police officers must first obtain the consent of the Attorney General. Then the police officer must go before a judge, who may then order the person to appear.

If the circumstances demand quicker action, then the police officer can arrest the person without getting a warrant. However, the bill sets out strict time lines to ensure that the consent of the Attorney General is sought and obtained and the person is brought before a judge within 24 hours.

We have a strong, independent judiciary in this country. I have full confidence in the ability of our judges to ensure that these powers are not abused and that the rights of Canadians are respected.

The investigative hearing provisions are also carefully circumscribed with layers of safeguards. First, no investigative hearing can be held without the prior consent of the Attorney General. Second, any investigative hearing must be held before a judge who oversees the hearing. Again, I have great confidence in our judges and their abilities and determination to ensure that the rights of all persons before their courts are protected.

A number of people have expressed concern that these hearings will violate established Canadian rights, such as an alleged right to silence and the right against self-incrimination. Honourable senators, we do not have a right to silence in Canada. We do have strong rights against self-incrimination, and these are fully and effectively protected with respect to the investigative hearings. Indeed, there is a specific provision reiterating the right against self-incrimination in the investigative hearing provision.

Honourable senators, there is deep concern, particularly among certain religious and ethnic minority communities, that these powers will be used improperly to target members of their community. The special Senate committee studying the bill heard testimony last week from a number of witnesses who spoke powerfully about the fear among some in their communities. They reminded committee members that many members of these communities come from countries that have experienced dictatorship, suppression, repression and massive poverty. They are afraid.

I understand this fear, honourable senators. It is critical that we reach out to these communities and let their members see concretely that in Canada the Charter of Rights and Freedoms protects us all. In Canada, they have a right to and they should work with our justice officials, the police and Crown attorneys, to make everyone aware of the sensitivities in our diverse communities.

When they appeared before the special Senate committee, both our justice officials and the representatives from the Canadian Association of Chiefs of Police spoke about the proactive work in communities to involve as many members of the community as possible. They spoke of the initiatives already begun so that, assuming that Bill C-36 is passed into law, the people who will be implementing the law will receive regular training with particular focus on the concerns of these communities.

The special Senate committee reported Bill C-36 without amendments, but attached a number of observations. Those from the majority on the committee focus on the importance of ensuring that the bill is properly implemented. Among other things, these members urged the government to place an urgent and high priority on the education process and to create a mechanism enabling representatives of minority groups to share views on methods best suited to achieving that level of sensitivity and balancing these new laws on a non-discriminatory basis. I will be proud to bring this observation to the attention of my cabinet colleagues.

• (1510)

At the beginning of my speech today, I said that among the contributions made by the special Senate committee when it conducted its pre-study of the subject matter of the bill was to strengthen our ability as parliamentarians to review how the powers provided under the bill will be exercised. The committee recommended that the Attorney General be required to table annual reports in Parliament detailing how powers like the preventive arrest ones are being exercised.

This recommendation was accepted and, in fact, extended to require annual reports from the federal Attorney General and Solicitor General, as well as from each of their provincial counterparts, detailing the operation of the preventive arrest and the investigative hearing provisions.

Professor Patrick Monahan, well known to many of us in this chamber, characterized the bill's requirements as:

...a fairly robust annual parliamentary review of the operation of those particular provisions, so that we will have detailed information on an annual basis as to how those provisions are actually applied in practice.

A number of witnesses who appeared before the committee welcomed the reports but expressed their hope that the information provided would be qualitative as well as quantitative. This is also reflected in the observations of the majority on the committee, which also urged the creation of a special ongoing advisory group including representatives of ethnocultural organizations to provide factual and anecdotal evidence of how the provisions of this bill are being implemented and advice for adjustments, if warranted. Honourable senators, again I will be pleased to carry this to my cabinet colleagues.

I have mentioned the observations of the majority on the committee. The Progressive Conservative senators on the committee added separate observations, protesting two issues, that is, the sunset clause and the fact that the recommendation to create a new officer of Parliament was not accepted by the government or in the other place.

The special Senate committee's pre-study report recommended a five-year, full sunset clause with the exception of the provisions implementing our obligations under international conventions. This was not accepted. Instead, a five-year sunset clause was introduced, targeted specifically at the most controversial new powers provided in the bill, namely, the preventive arrest and investigative hearing provisions.

Some have suggested, therefore, that this is not a real sunset clause, apparently because, instead of requiring that a bill be introduced if desired to extend the provisions, under Bill C-36 this would be done by resolution of both Houses of Parliament. The suggestion made by some witnesses was that, somehow, this would not allow parliamentarians to debate the issues, call witnesses and otherwise study the matter as closely as they would a bill. Honourable senators know very well that resolutions certainly can be and often are debated and studied very seriously.

Many of us remember the recent examples of the two different resolutions on Term 17, the constitutional amendment of the Newfoundland and Labrador education system. When the first resolution came before this chamber, a special committee was formed that not only heard witnesses but also travelled to Newfoundland to hear directly from the people of that province. The second resolution was studied by a special joint committee of the Senate and the House of Commons. Again, a large number of witnesses appeared. In both cases there was extensive debate. I do not think anyone would say that our study or consideration of those matters was any less serious or extensive because it happened to be a resolution rather than a bill. That issue, honourable senators, is simply a non-starter.

I am confident that, armed with the information in the annual reports and the other information that will be made public under this bill, such as the list of entities and any certificates issued by the Attorney General, we will be well positioned to keep a watchful eye on how the provisions are being implemented. Of course, sunset clause or not, ultimately Parliament has the power to amend the bill at any time, including when the comprehensive parliamentary review takes place within three years, which I note is before the sunset clauses take effect.

The final issue I want to address is the proposed new officer of Parliament to oversee the implementation of the bill. Honourable senators, it was clear to me as I followed the course of the special Senate committee's proceedings that there was by no means unanimous support among witnesses for this proposal. To the contrary, many witnesses expressed the view that while close scrutiny is absolutely essential there is no need to create a new body to be responsible for this task. We already have a number of bodies and offices well positioned to participate in this review and, indeed, who already carry responsibilities to review the law enforcement and securities agencies that will be implementing the provisions of the bill.

The Privacy Commissioner was most emphatic when he appeared before the committee that he opposes the proposal to create a new officer of Parliament. He noted that he is already responsible for certain of the tasks that would seem to be at issue, and continued:

To give a part of that oversight to a new officer of Parliament, with presumably other duties as well, would create either a fragmentation of oversight roles, which would weaken oversight; or it would create a hierarchy of officers of Parliament, which in my view would be untenable.

There are constitutional issues as well that were noted by several legal scholars who testified before the committee. Rick Mosley, Assistant Deputy Minister, Criminal Law Policy, told the committee:

The powers in Bill C-36 given to the police and to the Attorneys General will be exercised at both levels of government. Under our system, we believe it would be inappropriate for an officer of Parliament to conduct a review of the exercise of the jurisdiction of a provincial attorney general or minister responsible for the police, or the police or the Crown counsel who report to them. In a nutshell, that is one of the major objections to that proposal.

For all these reasons, the government did not accept our proposal to create a new officer of Parliament. This does not mean there will not be a close scrutiny of the implementation of the provisions of the bill. To the contrary, honourable senators, the bill provides for robust public reporting on how the bill is being applied. We already have experienced review bodies who oversee the exercise of powers by our law enforcement and security agencies; and we have several officers of Parliament who I expect will be making sure that the rights of all Canadians are respected and upheld.

Honourable senators, the bill has received extensive, vigorous public debate. It has been studied by parliamentary committees three times — here, in both pre-study and the usual cause-by-cause examination, and in committee in the other place. It is an important bill, both because of the changes it makes to Canadian laws and because of the terrible threat it seeks to combat. I believe that, particularly with the amendments made in the other place — largely in response to recommendations set out in the special Senate committee's pre-study report — we have a strong bill that will equip our law enforcement and security agencies with the tools they need to protect Canadians, while safeguarding Canadian rights and freedoms.

I invite honourable senators to join me in supporting this legislation.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I should like to ask some questions to the Leader of the Government in the Senate, if she will agree to answer them.

[English]

The Hon. the Speaker *pro tempore*: Will the Honourable Senator Carstairs accept questions?

Senator Carstairs: Yes.

[Translation]

Senator Nolin: Honourable senators, I listened with great interest to the minister's speech. If there were one thing he did during his parliamentary life that I wanted to thank former Prime Minister Pierre Elliott Trudeau for, it would be introducing the guarantee against any exaggeration by the administration with respect to fundamental rights, the Canadian Charter of Rights and Freedoms.

In her speech, the minister alluded to the observations that the committee so aptly wrote. During the work of the special committee, your government pledged, and I quote:

[English]

"We note that the Government of Canada is committed to working" with various organizations, including the judiciary, "...to engage in ongoing training that is sensitive to the ethnic diversity of Canadian communities."

Can the minister explain to me how her government, the executive, will train the judiciary?

Senator Carstairs: Honourable senators, first, in the preamble Senator Nolin refers to the Right Honourable Pierre Elliott Trudeau and his contribution to the Charter of Rights and Freedoms. Although we should credit Mr. Trudeau for a great many things, I place the Charter of Rights and Freedoms high on the list of things for which he should get credit.

However, it is important to note that section 1 of the Charter refers to what is justifiable in a free and democratic society. It is the number one provision of the Charter of Rights and Freedoms. We should bear that in mind.

• (1520)

As to the specific question, I am sure the honourable senator is aware that in the past monies have been set aside for training members of the judiciary. We do not direct that training. The judges determine that themselves. For example, in my province, I know a number of training sessions have been held on such fields as ethnic diversity, Aboriginal issues and the issues of women before the law.

Senator Nolin: Let us talk about the Charter. In her speech the minister mentioned that Parliament would oversee the protection of fundamental rights. I am much more hopeful.

[Translation]

Honourable senators, I am hopeful that the courts will protect these rights. I mentioned the work of Mr. Trudeau. Everyone knows section 1 of the Canadian Charter of Rights and Freedoms. Unfortunately, the committee did not deem it appropriate to accept the arguments of the Canadian Bar Association and of the Quebec Bar Association, which specifically alerted them to the danger of interfering with fundamental rights, without respecting the rules set by the Supreme Court in various decisions, including *Oakes*.

Thank goodness, the courts will call Parliament to order for having allowed the fundamental rights of individuals to be interfered with. I am referring specifically to section 24.1 of the Canadian Charter of Rights and Freedoms.

The Government of Canada wants to make funds available to the courts. How does one explain that commitment, when the leader of the government says that a series of mechanisms will be put in place? In the case of the courts, will these mechanisms put only money at the courts' disposal, or will the government go further in this educational process with the courts?

[English]

Senator Carstairs: Honourable senators, it is important to remember that, while we all place a great deal of confidence in our judiciary to find the right balance to interpret the Charter if parliamentarians do not, on occasion, get it right, it is also important that parliamentarians be vigilant at all times. That is why, when the Minister of Justice tables a piece of legislation, she in essence certifies that it meets the Charter. Those lawyers who work in the Charter branch of the Department of Justice have submitted it to a number of tests and have said that by their evaluation it meets those Charter concerns. On a number of occasions pieces of legislation have not met those Charter concerns because the courts have replied, "No, you may have thought that it meets the Charter test but it does not meet the Charter test. This is why it does not meet the Charter test."

We need to get the balance right. The judiciary has a responsibility but so, too, do parliamentarians have a responsibility.

With due respect to the honourable senator's question about the tribunals and how we can provide education for those tribunals to create sensitivity on certain issues, this can be done by appropriate funding and, if requested, the development of resource materials.

Hon. A. Raynell Andreychuk: Honourable senators, I wish to ask a question that relates to the investigation and study that the Special Senate Committee on the Subject-Matter of Bill C-36 carried out. There were some clear directions given as to what is necessary to create this balance the honourable senator spoke about. It is interesting to note that the Liberal majority observations state:

We wish to address those concerns expressed particularly by representatives of religious and ethnic minorities in Canada who are not persuaded that their liberty will be protected by the tools provided in the bill and that the powers may be exercised in a manner that improperly targets members of their communities.

We heard from Muslim lawyers who had excellent briefs and who have worked within our law. They understand the balances we have presently in the law. They stated forcefully that the balance struck in Bill C-36 is not an appropriate one as minority communities will be affected. They pointed to the definition and how it will be interpreted in the courts. They also pointed out that the normal safeguards such minority communities would have against arbitrary arrest and investigation have been diminished in this bill. The minority communities are clearly telling you that the balance is wrong, and bear in mind the Liberal majority went on to say that you should take this minority group into account. When you take into account past practices, understandings in the minority community, the vulnerability of minority communities against the majority and all of the other representations the committee heard, why does the honourable senators party still feel that this is the correct balance as opposed to the balance the committee unanimously supported in the pre-study report?

Senator Carstairs: Honourable senators, we should recognize that the pre-study report was simply that: a report outlining the various options that are open to government and that we would like them to examine carefully to see if they would help to improve the bill. The suggestions made were accepted to a great extent. I think the honourable senator would recognize that fact.

The government went even further. For example, instead of just having the Attorney General report, amendments were made so that the Solicitor General and provincial attorneys general would report so that we could get a quick handle on the numbers, both in terms of quantity and, as suggested in the observations, the quality of the times in which people have been subjected to preventive arrest or to investigative hearings. That will give a strong signal to parliamentarians. If it does not, then I would suggest we are not doing our job. It will give that very important signal to us.

There is no question that when people have been persecuted and have been used to a cultural tradition which does not have all of the tenets of democracy and all the protections of our Charter of Rights and Freedoms, they are more fearful than, let us say, the average Canadian who has lived here for generations, who has grown up under the Charter and who has become accustomed to living in a society knowing that those measures exist. Aboriginal communities and Aboriginal Canadians know that well in terms of their sense that the law does not always represent their wishes.

In balance, I think the government has it right. It has put in place checks and balances that will ensure safeguards. It will be up to us and up to the courts to ensure that those safeguards are

vigilantly analyzed and protected when we review this legislation.

Senator Andreychuk: As a follow-up question, honourable senators, we heard rather compelling testimony that having a review in three years is not the same as having a continuous oversight, because the damage done will be there for quite some time. There is, therefore, less ability to change and to use preventive measures.

• (1530)

I thought what marked Canada from other societies was that one individual, one life, one person counts in this society and that we are very careful not to trammel on the rights or the liberty of one person.

The honourable senator has said that she has gone further than the unanimous report of the special committee. With respect, I disagree because there was a three-pronged approach on oversight, on review and on a sunset clause. It was the three mechanisms in balance that could give Parliament a role.

What the government has done is added more people to report statistics. Therefore, the police are policing themselves, the Attorney General is policing himself, and the government is policing itself in a statistical way.

Even the Liberal majority observations, although the majority did not accept amendments, state very strongly that more is needed than quantitative analysis. Qualitative analysis is needed. By the measure of the Liberal majority observations, the government has not met the test of what was suggested by the senators who conducted a pre-study of the bill or what the Liberal majority observations state: We need qualitative measures to protect people not quantitative measures.

Senator Carstairs: I thank the honourable senator, but we will have to disagree on this matter. She says there is not sufficient oversight on this legislation, but look at the measures. We have a judicial review, reports to Parliament, reviews by the Privacy and Information Commissioners, a three-year review and a sunset clause. We also have an RCMP Public Complaints Commission and provincial complaints commissions. With the greatest respect, there are many oversights to ensure that there is fairness and equity in the application of this bill.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, could the minister explain why the government calls it a sunset clause? I do not believe it is that at all. Why did the government feel it was necessary to have its tentacles reach right into the two Houses of Parliament, thereby saying that when the motion is brought forward, it may be debated but not amended? It is putting in statute a rule that will fetter Parliament from amending a motion that, gratuitously, they will be allowed to debate. What is the rationale for limiting the debate to the extent of not allowing either House to amend the motion?

Senator Carstairs: Honourable senators, to be very clear on what the honourable senator is asking, is he speaking about the resolution that would be put into force and effect? The resolution should be as clear as possible. Either these provisions are necessary or they are no longer necessary. If it is determined that they are no longer necessary because we have met the threat of terrorism and that the terrorism that was a considerable threat to the Canadian people no longer exists, how would we amend it?

Senator Kinsella: Honourable senators, this is precisely the baffling part of where the government is at this point. Unless the government does not accept the proposition that the burden of proof is on its shoulders to demonstrate that it must have these extra powers, which is the proposition I sustain, then precisely by coming to Parliament and submitting the resolution for the continuance of the powers, it may be able to make the case that these powers are good and are needed for the next year. However, it may not be able to make the case that they are needed for three years. We do not know that. Why tie up a decision that could be very favourable to the government at that moment in time?

Senator Carstairs: Honourable senators, I am not sure that I follow the logic of the honourable senator, and maybe it is my hearing problem. If the government wishes to have such a resolution passed so that these powers are extended, it would have to prove that they were necessary. His argument that the burden of proof is not upon them does not make sense to me.

Senator Kinsella: Honourable senators, this is where I believe the government side has misunderstood my position. I supported the principle of the bill, which I believe all members on this side did. However, we were interested in achieving a balance between the powers in the measures. We took the government at face value and believed that it argued in good faith when it said that it needed extraordinary powers. We thought there would be a balance in terms of extraordinary civil liberties and human rights protections, and that is where the government has failed. It has taken the one but has not been very creative with the latter.

Senator Carstairs: Honourable senators, Senator Kinsella and I will disagree for the same reasons that I disagreed with the Honourable Senator Andreychuk. I think the government has put the mechanisms in place that make for the correct balance between the powers, the measures and the civil rights of Canadians.

Senator Andreychuk: Honourable senators, to continue on that question, when the minister made her presentation the first time and the second time, she indicated that we do not know what terrorism we are facing. There was a horrific terrorist attack on September 11, but it was not directed at Canada. The question was this: What does it do to the security of Canada? It threatened the whole world.

Because of that attack, the government said it was taking measures to deal with terrorism and that there would be an

unusual curtailment of the liberties of people and normal criminal law practices. These are criminal law provisions that we are talking about.

Having said that, the minister indicated that this is not an emergency situation but that it is ongoing. However, when asked questions, she quite rightly said, "I do not know how long." If one listens to the entire question and answer period, she was quite candid when she said that we do not know what we are facing and are not quite sure what measures we need. That is precisely the point of having parliamentary oversight and a resolution that has more than a yes or a no attached to it. We do not know if we need more measures, fewer measures, adjusted measures or different measures if our goal is to give a measure of security with the least amount of intrusion upon liberties and other human rights.

It is not the number of scrutinizing activities; it is the quality of those activities. To simply have reports and complaints commissioners in this situation — which I do not think Canada has faced except in wartime where we have used the War Measures Act, which has a time certainty — surely qualitative analysis and scrutiny, particularly conducted by someone other than the people who will be in the administration of this act, is incredibly important. Who better than Parliament?

Senator Carstairs: In that aspect, I agree with the honourable senator 100 per cent. Who better than Parliament? Who better than senators and members of the House of Commons? That is why there must be a three-year review; that is why there must be a resolution before five years have passed. That is what Parliament should be doing.

Let us be very clear. This Parliament could start tomorrow if it had assigned a particular committee to do an ongoing day-by-day evaluation of the activities surrounding the implementation of this bill. Nothing limits us. We had some debate and discussion earlier today in which the Leader of the Opposition indicated that we should not be a recycling bin for the House of Commons, and I told him that I agreed entirely with his comment.

• (1540)

That is why we need to be more vigilant, because I am not certain that the House of Commons will take on that responsibility. There is no reason for us not to take it on. The honourable senator chairs the Human Rights Committee and it would seem logical to me that such matters would form part of the ongoing work of that committee.

Senator Andreychuk: Honourable senators, I will certainly take up that challenge, now that it has been offered. I am hopeful that when the committee returns to the House with its terms of reference and needs analysis, it will have the support of the Leader of the Government.

Honourable senators, I want to pursue one other issue that troubles me greatly. There is the three-year review but that is a long time for someone whose rights are deprived and who may spend days in preventive custody. There is also limited, insufficient oversight. Because this is so new, would it not be better that there be a sunset clause, not on certain issues such as hate mongering, mischief against religious property and the implementation of international covenants, but rather on a whole host of issues, such as those amendments to the Criminal Code, for example, that we honed over decades. Would that not be a wonderful signal to send to our minority community, who will feel and suffer the brunt of this legislation, make no mistake?

The average Canadian will receive the security, but at what price to the freedoms and liberties of a minority that is already targeted and will continue to be targeted, irrespective of Bill C-36. Despite honest belief and despite good policing, there will inevitably be intrusions on those minorities. They are already feeling the chilling effect. Would it not have been wiser for a country as mature in its development as Canada, to signal a sunset clause at five years to that community that would say: This is the price we pay for a defined period of time, and we will come back and ask for an extension, if it is necessary. However, we will have in our pockets proof of necessity, not opinion of necessity.

Senator Carstairs: Honourable senators, the honourable senator is quite correct when she says that three years is a long time. That is exactly why the government put a judicial review in place. It was not in the original draft of Bill C-36, and the senator is aware of that. As a direct result of this committee's work, that review was put into the bill and that is the kind of oversight that will happen on a continual basis. There is a sunset clause for the two most extensive, new powers that have been given, in terms of preventive arrests and investigative hearings.

Hon. Gérald-A. Beaudoin: Did I hear the words "judicial review after three years?" The judicial review exists within our system. It is not necessary to refer to judicial review in a bill such as this one or in any legislation. The courts have jurisdiction over the interpretation of all statutes. I want to be quite certain that the sunset clause is one issue and the review process is another issue. When we advocate the inclusion of a sunset clause, it is only to provide an equilibrium between additional powers and the Constitution, as it has been interpreted some 450 times by the Supreme Court of Canada. That is the reason for the sunset clause.

Honourable senators, if the bill were not permanent, the situation would be different than if it were an emergency measure. The Supreme Court would not interpret a statute that is permanent in the same way that it would interpret a statute that is an emergency measure. That is the reason for the sunset clause. It is quite different from a judicial review or any other oversight that has been proposed in Bill C-36.

Senator Carstairs: First, honourable senators, I was referring to very specific provisions of the bill, which, in its initial drafting, allows the Attorney General of Canada enormous powers that are not subject to any judicial review. In response to Senator Andreychuk's question, I was referring to the judicial review that has been specifically attached to those new powers.

The problem, honourable senators, is that terrorism is not a war and it is not an emergency situation like any other that we have experienced. We had the implementation of the War Measures Act in 1970, and some people today would say, and I would be one of them, that it was, in all likelihood, an overreaction; it was probably not required at the time, but it was requested, and so it was put into place. Many people, as a result, suffered from the implementation and application of the War Measures Act.

The threat of terrorism is not short-term. How long it will last, we do not know. Terrorism has been with us in many forms for many generations, for many centuries. It was only on September 11 that it took on an entire new form because of the massiveness of that act of terrorism. However, it would be naive to suggest that we have not experienced terrorism before.

Honourable senators, terrorists' acts have occurred in many countries prior to the events of September 11, 2001. The reality is that the government does not know exactly how long it will need these measures in place. That is why we need parliamentary vigilance in this particular matter; that is why we need the three-year review; and that is why we need the five-year resolution.

On motion of Senator Lynch-Staunton, debate adjourned.

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—DEBATE ADJOURNED

Hon. Landon Pearson moved third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts.

She said: Honourable senators, I rise today to speak to third reading of Bill C-7. I wish to say up front that I believe in this bill. I am sponsoring it because I asked to, not because I was asked.

Honourable senators, I have been paying close attention to youth justice ever since the Young Offenders Act was amended not long after I came to the Senate and first sat on the Standing Senate Committee on Legal and Constitutional Affairs. As I studied the system, I began to realize that there are too many variations across the country. I also saw the overuse of incarceration in most provinces and territories; disparities and unfairness in youth sentencing; too little attention paid to rehabilitation and re-integration; and a lack of respect for the system among youth, their families, victims and others.

To understand these observations better, I engaged the services of a young law student two summers ago to travel across Canada to speak with young people in trouble with the law and thereby gain some perspective on this issue. The information that he recorded was discouraging. Many youth did not feel that the system was meaningful to them. It thus became even clearer to me that the youth justice system, as a whole, was greatly in need of restructuring.

Obviously, this was also clear to the Minister of Justice, who already set out to shape a new system more suited to the developmental needs of young people and the long-term security of the public.

Honourable senators, I was privileged to have a small influence on this process by participating in several workshops organized by Justice Canada in conjunction with youth and professionals around such topics as the role of sports and recreation, preventing crime among adolescents and the special challenges confronting Aboriginal youth.

Bill C-7 is another piece of this process of renewal — an essential one, of course, but not the only one. The other piece of this process is federal funding that would accompany this bill and the changes in attitudes and behaviours that should be stimulated by its implementation.

• (1550)

Bill C-7 is not a perfect response to the complex difficulties of young people in trouble with the law and the legitimate concerns of the public about them. We heard much criticism from many of the witnesses who appeared before us. Their views varied considerably.

Witnesses, however, tended to agree on three points. First, there was general agreement in respect to the principles of the bill. Second, most witnesses were concerned about the overrepresentation of Aboriginal youth in the justice system and sympathetic to the need to address their special needs. Third, there was affirmation, particularly on the part of witnesses from Quebec, that Quebec was doing a better job with the existing legislation than any other province. Beyond that, the differences were many.

At this time, honourable senators, and before I describe how I think this bill improves on the YOA, I should like to correct an impression that may have been left mistakenly by Senator Nolin when he quoted me in his report stage speech. Let me reassure my colleagues that I never intended to question the Senate's role in the legislative process, as subsequent remarks in the same transcript that Senator Nolin did not quote would show.

On the contrary, I truly believe that our capacity to speak out on behalf the voiceless and powerless, our sober second thought, depends to some extent on the distance we are able to maintain

from the exigencies of electoral politics. What I was trying to express that day, imperfectly, I guess, was my concern about how to balance the reality presented to us by the elected ministers of the provinces who appeared before us with our views about how young people should be treated.

As a senator, I represent Ontario, and although I disagree with every one of the 100 amendments put before us by the Attorney General and Minister Responsible for Native Affairs of Ontario, I have to recognize that he speaks for a substantial proportion of my province's population. The credibility of the youth justice system in the minds of the public is essential for it to function well. We have to find, as Senator Carstairs so eloquently said last week, the right balance. This is exactly what I believe Bill C-7 achieves.

In my view, the new legislative framework set out in Bill C-7 corrects the fundamental weaknesses of the existing legislation while building on its strengths. Now let me set out how some of the principal changes it contains would make a real difference in the lives of young people in trouble with the law.

Honourable senators, I will gather these changes under three rubrics: proportionality in youth justice, elimination of transfers to adult court, and rehabilitation and reintegration. First, let me address proportionality in youth justice.

The failure of the majority of Canada's provinces and territories to limit the most serious interventions to the most serious offences, as well as the failure to find constructive options for the vast majority of less serious youth crime, is the major reason that we have such a disturbingly high youth incarceration rate. Currently, if a 15-year-old commits a minor theft, his or her likelihood of serious involvement in the justice system is high. The Canadian rate in 1998-1999 for bringing youth into youth court is more than 40 per 1,000 of youth aged 12 to 17 years, or about one case for every 21 youth.

In many countries, programs outside the formal youth justice system are used to deal with less serious offences. These include police cautions or alternative programs involving restitution or reconciliation with the victim. Canada uses these options less than other countries; we rely more on formal charges and procedures, which generally are not as effective as other less formal options. Statistics show that in our country young accused can and do receive custodial sentences for minor thefts. Even when it is a first conviction, 8 per cent of such offenders in Ontario and over 7 per cent in Quebec are sentenced to custody.

The damaging effects of custody for young people are well established. Statistics also show that youth sometimes receive a longer period of custody for minor thefts than an adult placed in custody for the same offence. The reality is that, under the current Young Offenders Act, a 15-year-old accused of theft is likely to be treated more harshly than youth in other countries and more harshly than adults here in Canada.

Under the proposed Youth Criminal Justice Act, there would be statutory limits and principles to promote proportionality and limit the excessive use of the criminal law power against youth. Bill C-7 expressly provides that extrajudicial measures, or non-court measures, be presumed to be adequate to hold first-time non-violent offenders accountable. Accordingly, under the legislation before us it would be very exceptional that a first-time property offender would proceed to youth court. Instead, he or she would be dealt with by a police warning, caution, referral or a program. These measures are themselves limited by being proportionate to the seriousness of the offence.

Moreover, in addition to providing principles for sentencing that limit the intervention to a proportionate response, there are explicit statutory restrictions on the severity of the sentence. Notably, the sentence for a youth cannot be more severe than that which and adult would receive for the same offence in similar circumstances.

Honourable senators, let me talk about the elimination of transfers to adult court. The story of Maria shows clearly the problems with transferring youth into the adult system for trial under the Young Offenders Act. Maria, of course, is a pseudonym. However, the young person in question has told her story publicly several times. I have met her on two occasions and am impressed by her courage in coming forward.

Maria was 16 years of age when charged with murder in relation to a shooting death. She was driving in a car with six other young people, when one of them, a young man, shot another youth. After a long period of procedures and pre-trial detentions, she was transferred to adult court prior to having been tried or convicted of an offence. It was presumed that her prospects for rehabilitation would be better in the adult stream, given that the adult system has a healing lodge and other programs suited to the fact that she is Aboriginal.

Procedural protections, such as privacy rights and others, that are part of the youth system are not available if the youth is tried as an adult. Maria's name was made public before she even had been convicted of an offence. The charges were reduced to manslaughter. She received a one-year sentence of custody — a length of sentence that could have been imposed by the youth court. However, instead of being sent to the healing lodge, Maria was sent to the Saskatchewan Penitentiary, largely a maximum-security federal prison for men. After her custody sentence, Maria was released to a halfway house for men.

Honourable senators, no one in this chamber would consider this a fair way to treat anyone, let alone a young girl.

Under Bill C-7, a youth will not be tried in adult court. All youth will be tried in youth court under youth court rules that provide for age-appropriate protections like privacy rights and

rights to counsel. The hearing on the appropriateness of an adult sentence will only occur after a finding of guilt and after all the evidence about the offence has been heard. While there is the presumption that an adult sentence should apply to those 14 years of age and older for the most serious offences of murder, attempted murder, manslaughter, aggravated sexual assault and a pattern of repeat serious violent offences, adult sentencing is not automatic and the presumption can be rebutted.

Even in cases where the presumption does not apply, a Crown can apply to have an adult sentence given for any serious offence committed by someone 14 years of age or older. The test for an adult sentence remains the same whether it is sought by the Crown or triggered by statute. As has been the case since the 1908 Juvenile Delinquents Act, adult sentences can be applied to youth 14 years of age or older in all provinces.

Under Bill C-7, the youth justice procedure for the most serious offences will be speedier, retain age-appropriate due process protection and be more respectful of the presumption of innocence. The bill also includes a presumption that a youth under the age of 18 will serve an adult sentence in a youth facility. This is more consistent with the spirit of the UN Convention on the Rights of the Child, which is expressly referenced in the preamble of the proposed new legislation. Under very rare circumstances, when a youth presents a real danger, either to himself or herself to another youth, an adult facility may simply have to be considered.

If Bill C-7 had been in place for Maria, she would have been tried in youth court and her privacy would have been protected during all the proceedings. Moreover, the procedural delays associated with the transfer to adult court would have been avoided. Given that the charges were reduced to manslaughter and a sentence length within the range of youth sentences was imposed, Maria would not have received an adult sentence and have been sent to the Saskatchewan Penitentiary. Moreover, she might have had access to the new and federally supported intensive rehabilitative custody and supervision sentence, which is a therapeutic regime to provide help, supervision and support to the most troubled and violent young offenders.

The intensive rehabilitate custody and supervision sentence is available to young people convicted of murder, attempted murder, manslaughter, aggravated sexual assault and repeat serious violent offences. For youth suffering from a mental or psychological disorder or an emotional disturbance, an individualized treatment plan would be developed; if an appropriate program, suitable to the youth, is available, then the sentence would be given. Since it is an individualized treatment plan, it would be tailored to the needs of individual youth and could include psychiatric assistance, counselling, peer support programs for victims of sexual abuse, addiction treatment, and so on.

• (1600)

Finally, I should like to examine rehabilitation and reintegration. Not only would improved rehabilitative and reintegrative options be available to youth like Maria who have been convicted of serious offences, but they would be encouraged for all youth involved in the youth justice system. Rehabilitation and reintegration within the limits of proportionality are key objectives of the new legislation as reflected in general and, in particular, in the sentencing principles.

While youth may know their behaviour is wrong, they may not fully understand the nature and consequences of their acts for themselves and for others. Some young people also lack the structure, guidance and support in their communities needed to change behaviour patterns and overcome damaging influences.

Many of the new provisions in the proposed Youth Criminal Justice Act allow for individualized interventions aimed at instructing the youth in trouble with the law. Police, Crowns and judges are given statutory authority to warn and caution young people that their behaviour is not acceptable and more serious consequences may follow if they repeat the behaviour. "Conferencing" is encouraged at many stages of the process, which could allow the young person to be a participant in a process with victims, family members and others, to learn about and understand the consequences of his or her behaviour and to develop ways to make amends.

The range of sentencing options has been expanded. In addition to sentences that allow the young person to attempt to repair some of the harm caused through restitution, compensation and community service orders, there are also new sentences that provide for close supervision and support in the community. Changing behaviour in the community is key to addressing youth crime. These sentences include attendance orders, intensive support and supervision orders and deferred custody and supervision orders.

One of the key weaknesses of the current Young Offenders Act is the absence of mandatory reintegration support. This means that a 16 year old returning to the community after a period in custody may not have support, supervision and guidance for the critical transition back into the community. Particularly for the older youths, child welfare systems may no longer be available for some of their most basic needs like housing. Maria has reported that she was thrust out of the system with only a pillow and a blanket. In addition, problems with schools, families and peers may still be waiting for the youth when they return to the community. At this critical time, the youth may be without support and encouragement in the community to change behaviour patterns.

The Young Offenders Act currently does not provide sufficient provision for a safe, graduated reintegration in the community.

The proposed law includes provisions to assist the young person's reintegration, and a constructive reintegration will protect the public by guarding against further crime. Bill C-7 provides that periods of incarceration be followed by periods of supervision in the community through custody and supervision orders. At the time of imposing the sentence, the judge will state in open court the portion of time that is to be served in custody and the portion to be served in the community. Breaching conditions of community supervision could result in the youth being returned to custody.

Studies demonstrate that treatment is more effective if it is delivered in the community instead of in custody. The reintegration provisions encourage continuity between the custody and community portions of sentence through increased reintegration planning, which takes into account the youth's needs throughout the whole sentence and through reintegration leaves for specific purposes of up to 30 days.

Before concluding, honourable senators, I should like to make a few remarks about the Convention on the Rights of Child. I have been impressed with the level of attention that the Standing Senate Committee on Legal and Constitutional Affairs has given to this important instrument and moved by the eloquence with which some senators, notably Senator Joyal, have discussed it in this chamber. While I agree with Minister McLellan that Bill C-7 conforms with the standards set by the convention — remembering always that Canada took a reservation on section 37(c), which requires the absolute separation of youth from adults except where it is not in the child's best interests — I also agree with Senator Andreychuk that we should, at some time, consider implementing legislation for the convention. However, slipping such a concept into a bill on youth justice by amendment is not the best way to do it. To do so would be to lack full respect for the holistic name of the convention. It would be much better to have a full and open discussion of the convention in both Houses of Parliament so that the awareness not only of legislators but also of the public could be raised. That would require a separate piece of legislation. That is what I hope our new Human Rights Committee will propose not only for the Convention on the Rights of the Child but also for other United Nations conventions and treaties that have not received enabling legislation. In the meantime, I prefer to support Bill C-7 as it stands.

Honourable senators, youth crime is a complex phenomenon. We all know there is no absolute consensus on youth justice. On the other hand, there is little disagreement with the key tenets of this legislation: use the criminal law power with restraint; keep more youth out of the justice system and out of custody; limit the use of the criminal law power by what is a fair and proportionate response to the offence; improve and protect the rights of young people in this system; support an enhanced rehabilitation and reintegration of young people; and provide for more inclusive justice that provides a voice for the accused, the victim and others.

Moving ahead now with Bill C-7 will initiate changes that will make a real difference in the lives of young people. A 15-year old involved with a first-time minor theft will not be swept into the justice system but will be held accountable in a proportionate and effective way outside the courts. Young people who commit serious offences will not be lost to adult trials and adult correctional regimes but will be provided with due process protections appropriate to their ages and, in some cases, with intensive rehabilitative regimes. All young people coming out of custody will not be left on their own to cope with the difficult transition back to their communities but will be supported and guided through effective reintegration plans and programs.

Honourable senators, it is my considered view that the improvements in this legislation are clear and meaningful. Bill C-7 addresses fundamental weaknesses of the Young Offenders Act. It is a significant advance in our ongoing quest for justice for young people. I urge you to vote in favour of Bill C-7.

[Translation]

Hon. Jean-Claude Rivest: Honourable senators, I wish to speak to this important bill concerning the problem of youth crime. The speech given by the Honourable Senator Pearson and the very content of Bill C-7 show very clearly that there are two approaches to this problem.

The first consists in talking about crimes committed by young people, and this is the approach behind the whole philosophy of Bill C-7. The other consists in talking about young people who commit crimes. It is an entirely different philosophy. It is why many parliamentarians — and almost all Quebecers — object strongly to the philosophy which led the government to pass Bill C-7.

Senator Pearson, who is much more familiar with the field than I, spoke with great interest about the Convention on the Rights of the Child. The purpose of this convention is to protect children from crime and from a number of other situations. We are told that we could examine this at a later date.

Canada signed the Convention on the Rights of the Child and must respect it. However, it could have taken advantage of this bill, and more particularly of the amendment put forward by Senator Andreychuk. If this bill truly respects the rights of the child — rights which were endorsed by Canada in an international document — I wonder why the majority of senators voted yesterday against an amendment which would have specifically ensured that the whole bill respected the Convention on the Rights of the Child. That was the purpose of the amendment put forward by Senator Andreychuk. This can only mean that the Honourable Minister of Justice has doubts as to whether her bill fully meets the requirements of the Convention on the Rights of the Child signed by Canada.

With respect to the problem of young people and crime, when we say that we must speak more about young people who commit crimes than about crimes committed by young people, we can clearly see where this bill is coming from.

• (1610)

No doubt, improvements could be made to Quebec's system, which is also not perfect, despite the fact that everyone recognizes that it is by far the best system. The results in Quebec are there to prove it.

Bill C-7 responds to a certain type of public opinion that is greatly affected by some terribly shocking crime committed by a child. This is what we see in the tabloids. Public opinion is formed in this environment, and afterwards, no one talks about it. No one talks about the child or the adolescent who committed the crime. All you hear, quite often, is that the child who committed the crime, as terrible as it was, had health problems, social adjustment problems, family problems, and so on. The public debate surrounding this bill was based for the most part on the opinions voiced in the tabloids. That is why I described this bill in Quebec in some ways as a tabloid bill.

I agree that the bill contains some improvements. However, we were sure that the Quebec system was the best that Canada had to offer. The Quebec system focuses on the child or adolescent who commits a crime. It favours rehabilitation, education, support and reintegrating youth back into the community. There is not much emphasis on police, crime, penalties or imprisonment.

I asked the Minister of Justice why the government has not simply extended to Canada as a whole — while respecting the way each region operates — the system in place in Quebec, with any necessary improvements of course. This is why I find the bill politically unwise. The minister's response was that this would have been interesting, but that the other regions of Canada — no doubt thinking of their governments — were not prepared to do so.

What an abdication of responsibility! That is obviously what it is. I understand that such a response may be plausible, but what is involved here exactly? Depriving young people of the rehabilitation that would provide them with an opportunity for a better life. Apparently, some Canadian communities, because of what we read in the tabloids, are not prepared to establish this as the central value of a statute on young offenders. It is not a question of creating an illusion of security by passing this bill. The first and last inspiration for such legislation is to protect the young person who has committed a crime. I find it totally unacceptable that such a bill can be passed solely on the recommendation of the Department of Justice, when brilliant legal experts have provide us with the most eloquent demonstrations of the value of new concepts they have found. This is not a legal problem; it is a human problem!

I object to this bill, not because it is going to do considerable harm to the Quebec system — as the judges, lawyers and social workers have told us — but rather because it is going to deprive an incalculable number of young Canadians of profoundly humane services designed to deal with their criminal offences. Why pass such legislation at this time, when the bill is so far removed from what true legislation should be?

The public may be concerned about youth crime. However, it is sometimes misinformed. In my opinion, the role of a public and political institution is to explain to the public why it is mistaken and to give it better information. If we make young people our key concern, the public will be better protected from youth crime.

Honourable senators, in my opinion this would have been the only appropriate measure on the part of our political institutions, with respect to a human concern that is intensely felt by the public, including young people.

This bill may have some merits, from a legal point of view, regarding the evolution of certain police practices and forms of incarceration. However, it has no real and lasting impact in terms of why a young person commits a crime. The problem is not related to the police. Rather, it is a medical, social and family issue. We can see it with the incredible number of young aboriginals who are incarcerated. We know that this is because of the deplorable situation our aboriginal fellow citizens are in. The government is suggesting that the solution lies in police or court action.

Honourable senators, the solution can only come from men and women who would have the courage to put the human being before the system, to put the young person before the crime. Unfortunately, this bill does not meet these expectations.

[English]

Hon. Wilfred P. Moore: Honourable senators, I spoke in this chamber on December 4 last with respect to Bill C-7. I believe I placed before honourable senators a clear case for the need to include in the sentencing portion of this bill a provision directed specifically to securing relief for our Aboriginal young persons who find themselves caught in our justice system. I do not propose to review those remarks at this time.

MOTION IN AMENDMENT

Hon. Wilfred P. Moore: Honourable senators, I wish now to propose the following amendment to this bill. I move, seconded by the Honourable Senator Watt:

That Bill C-7 be not now read a third time, but that it be amended.

(a) in clause 38, on page 38,

(i) by replacing lines 27 and 28 with the following:

[Senator Rivest]

“for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and

(e) subject to paragraph (c), the sentence”, and

(ii) by renumbering all references to paragraph 38(2)(d) as references to paragraph 38(2)(e); and

(b) in clause 50, on page 57, by replacing line 23 with the following:

“except for paragraph 718.2(e) (sentencing principle for aboriginal offenders), sections 722 (victim impact state-”.

• (1620)

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Pierre Claude Nolin: Honourable senators, I wish to speak on this amendment but not today.

The Hon. the Speaker: Some senators wish to speak to the amendment. I will permit speeches unless there is a desire of the house that the question be put.

Senator Cools: No, he is entitled to speak. It is a debatable motion.

[Translation]

Senator Nolin: Honourable senators, I move the adjournment of the debate.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I know that a number of honourable senators wish to speak to Bill C-7, at third reading stage, and that some wish to propose amendments. I would like all senators to have an opportunity to express their point of view on the amendments they would like to propose.

I wish like my counterpart opposite to tell me how to handle the amendments rather than adjourn the debate right now. Could we perhaps hear another senator, and, if there is another amendment, have two votes. They amendments could be voted on separately. We could do it at one time, later today or tomorrow. We want to hear as many of those senators who wish to speak as possible.

This week, we are trying to do as much work as we can on this bill. I think that one other senator would be prepared to speak today to Bill C-7.

[English]

The Hon. the Speaker: Honourable senators, just so I know where we are at, Senator Nolin had moved a motion, which I have not put. Senator Robichaud has secured the floor, as is often the case, to discuss how we might best proceed with this particular matter. I think he addressed his question to the Deputy Leader of the Opposition and I am assuming, but perhaps I should confirm, that I have leave for this exchange to take place. Is leave granted?

Hon. Senators: Agreed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, if I understood the Deputy Leader of the Government correctly, he wants to deviate from the rules. I think we should act in a somewhat novel way today and follow the rules. I think we will deal with each amendment as presented and dispose of them. I assure honourable senators and my colleague opposite that there is no intention on this side to delay anything.

[Translation]

Senator Robichaud: Honourable senators, I in no way wished to insinuate that the opposition intended to delay matters. We have their full cooperation in moving the debate along in this house. If we could hear another senator on Bill C-7, it would add to the debate and allow more senators to speak to this bill.

[English]

The Hon. the Speaker: For clarification, the rules of procedure are clear. Unless leave is granted, we will deal with one amendment and one subamendment to that amendment. We will deal with no more than one at a time. I make that point so that all senators are clear as to what the exchange is about. I gather Senator Nolin has no objection to another senator speaking now.

Senator Nolin: On that subject, no.

Hon. Tommy Banks: Honourable senators, I would thank Senator Nolin —

Senator Nolin: Are you speaking on the amendment tabled by Senator Moore?

Senator Banks: No, I am moving an amendment.

The Hon. the Speaker: Senator Banks, we have before us now a motion in amendment by Senator Moore. Under our rules, we could entertain a subamendment that directly relates to Senator Moore's amendment. However, in the absence of leave, our rules do not provide for us to entertain another amendment until we have disposed of the amendment proposed by Senator Moore.

Senator Nolin indicated that he wishes to adjourn the debate. I will entertain that motion, but he also indicated that if another senator wishes to speak now, he would have no problem in

deferring his motion until then. Does another senator wish to speak on the motion in amendment by Senator Moore, on the matter before the house?

If not, Senator Nolin has moved, seconded by the Honourable Senator Meighen, that further debate on Bill C-7, in particular the motion in amendment of Senator Moore, be adjourned until the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

On motion of Senator Nolin, debate adjourned.

[Translation]

APPROPRIATION BILL NO. 3, 2001-02

SECOND READING—ORDER STANDS

On the Order:

That Bill C-45, An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002, be read the second time.

• (1630)

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with respect to Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002, it is our usual practice to consider the report by the Standing Senate Committee on National Finance, which studied the forecasts.

[English]

Honourable senators, I bring to your attention the fact that the tenth report of the Standing Senate Committee on National Finance regarding the Supplementary Estimates (A) 2001-02 is listed incorrectly on today's Order Paper. It is listed as Order No. 5 under Other Business as opposed to under Government Business.

A quick examination of Order Papers in recent years shows that it has been listed in both places. On March 22, 1998, the Order Paper listed the third report of National Finance on the Supplementary Estimates (B) 1997-98 under Other Business. However, on March 27, 1996, the Senate Order Paper listed the second report of National Finance, Supplementary Estimates (B) 1995-96, under Government Business. As well, the March 17, 1999, the Order Paper listed the tenth report of the Standing Senate Committee on National Finance on Supplementary Estimates (C) under Government Business. Also, on March 28, 2000, the third report of National Finance on Supplementary Estimates (B) 1999-2000 was listed under Government Business.

Despite the inconsistencies in where this item is listed, I believe that it is clear that the Estimates are part of Government Business and should be listed as such.

[Translation]

Honourable senators, I would like us to consider the tenth report of the Standing Senate Committee on National Finance, Supplementary Estimates (A) 2001-02, under the heading Reports of Committees under Government Business later today.

[English]

Hon. Lowell Murray: Honourable senators, I had not intended to intervene because I did not think there would be an occasion to do so.

The Hon. the Speaker: Honourable senators, I should clarify where we are on the Order Paper. I will give Senator Murray the floor in a moment, but I have been cautioned to keep things straight.

Senator Robichaud has risen as Deputy Leader of the Government or house leader to call an item of Government Business. He explained the situation with respect to the tenth report of the Standing Senate Committee on National Finance. Senator Murray rose. Normally, it would be the Deputy Leader of the Opposition or house leader on the opposition side who would rise, but Senator Murray rose to question Senator Robichaud with respect to the matter that he has brought forward and the way in which it should be treated.

Is leave granted, honourable senators, for Senator Murray to intervene or others to question Senator Robichaud on this matter?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Perhaps this disorder should be clarified. I concur with my honourable friend that when the report was presented, it would have been best listed under Government Business because that has been the practice. However, I have learned everything that I have learned from Senator Murray and would defer to his corporate memory of the place.

In the past, I understand that we have debated an Estimates report from our National Finance Committee before a supply bill came to us. When the supply bill did come, I understand that there was no debate on it as such. Perhaps Senator Murray, with his corporate memory, could verify or shoot that down.

Senator Murray: The Deputy Leader of the Government and Deputy Leader of the Opposition are both correct. First, the report of the committee studying the Estimates is government business and should be dealt with as such. Second, the convention has grown up, at the insistence of Her Majesty's Loyal Opposition, whatever the party, that before we will entertain a supply bill, the report of the Standing Senate Committee on National Finance must have been presented or

tabled. It must be before the Senate. It is not necessary, in my humble opinion, to debate it. There is nothing to stop the government from proceeding with its interim supply bill with or without a debate on the committee report. However, the report has now been called and it is before us.

Senator Lynch-Staunton: No, it has not.

Senator Murray: The bill has been called, but the Deputy Leader of the Government has properly pointed out that the report belongs under Government Business, and he has asked to have it called. I think that is quite appropriate. If he calls it, I may even say a few words on the substance of the report, and Senator Bolduc intends to do the same.

The Hon. the Speaker: I will ask the Table to proceed to call the tenth report of the Standing Senate Committee on National Finance.

Order stands.

THE ESTIMATES, 2001-2002

SUPPLEMENTARY ESTIMATES (A)—REPORT OF NATIONAL FINANCE COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the tenth report of the Standing Senate Committee on National Finance (Supplementary Estimates "A" 2001-02) tabled in the Senate on December 4, 2001.—(*Honourable Senator Finnerty*).

Hon. Lowell Murray: Honourable senators, as the chairman of the committee, I will intervene at this stage, although I had not expected or intended to do so. However, at this happy season, I have the opportunity to express my appreciation to colleagues on the committee for their cooperation and hard work over many months, as well as to the clerks and staff of the parliamentary library and the committee for their important collaboration.

The Standing Senate Committee on National Finance has met twice a week virtually every week that the Senate has been sitting during the fall. At Senator Moore's instance, we conducted, completed and reported on a study of the accelerated, accumulated deferred maintenance in Canadian institutions of post-secondary education. We live in hope, notwithstanding yesterday's budget, that this problem will be addressed in some fashion by the federal government, even though none of us believe that it is up to the federal government to take total ownership of such a problem. Nevertheless, we hope and believe that some leadership will be shown by the government on that matter.

The committee undertook and conducted a number of extremely interesting public hearings on the question of equalization. This was done at the initiative of Senator Rompkey, and a reference was made to our committee.

We concluded our public hearings and have begun to, in private, consider the nature of a draft report on this important matter that is so central to the concept that most of us have of the Canadian federation. We have had two meetings on the draft report and, as senators may have noticed. Today, I gave a notice of motion to the effect that I will be seeking an extension of the deadline for producing the final report. The deadline was to have been December 21. Tomorrow, I will ask the Senate to agree to extend the deadline to February 26. This will give us an opportunity to consider our draft report not at leisure, but in greater detail.

• (1640)

These special studies make an important contribution, I think, to public policy. By the way — and this is relevant to the report that is before us — we have reached a consensus in the committee that we will undertake two other important studies after the New Year. One, falling upon comments that were made by the present Auditor General and her predecessor and comments that have been made in reports of this committee and others, will deal with the question of the increasing practice in the government of setting up these special agencies and foundations at more than arm's length from the government, from Parliament and from important statutes such as the Financial Administration Act and others. We will get into that in considerable detail.

We also intend to examine very carefully the use of Treasury Board Vote 5, the so-called contingencies vote, which has given the broadest definition one has ever heard to the word "contingency." It has become a pool of funds to be accessed by ministers whenever there is a new initiative they want to undertake but do not have the time or the inclination to come to Parliament with their program.

Senator Bolduc may be speaking about some of these matters later today, but we intend to get on with it.

I shall not take you through the report of the committee on Supplementary Estimates (A). That report speaks for itself. We had, as usual, the officials from the Treasury Board, who, as usual, were helpful, forthcoming and informative. Such information as they were not able to give us on the spot they undertook to provide at a later date. I am sure they are in the process of doing so now.

I shall mention one matter that is dear to the heart of Senator Stratton, although he may be too modest to raise it today. It has to do with the Canadian Firearms Program. This is not a matter that has engaged me very much over the course of the last few years. I think I may have made a small contribution to the debate when the bill was before us several Parliaments ago, but the government is coming back under Supplementary Estimates for \$114.4 million for the Canadian Firearms Program.

Under questioning, mostly by Senator Stratton, the officials let us know that this would bring the overall cost of the program to \$689.6 million. It is reaching for \$700 million. This is a program in respect of which Parliament and the country was told by the then Minister of Justice, Mr. Rock, that it would cost \$80 million and would be recoverable.

Interestingly enough, I saw a reference in the newspapers the other day to a poll that showed that a majority of Canadian Alliance supporters now support the firearms registration.

However that may be, all the evidence, including this evidence, is that this program is a fiasco, a costly fiasco. Regardless of the state of public opinion, whether it is the voters of the Canadian Alliance or anyone else, some government some day will have to re-examine some of the assumptions behind the program. That government will have to undertake a proper analysis of the effectiveness of the program and decide on important changes that will have to be made to the program to achieve the same objectives but in a way that will not cause as much disruption and expense as now appears to be the case.

That important issue was flagged in the committee by Senator Stratton and has been flagged in our committee report, although perhaps not in quite the language that I have used to describe it. Nonetheless, it is a fiasco, and I think many people in the government know that it is a fiasco, and it will have to be addressed.

With those few words, honourable senators, once again I thank members of the committee for their hard work and cooperation over the months. I look forward to the important work that we will be doing in the New Year. I commend the report to your interest and support.

Hon. John Lynch-Staunton (Leader of the Opposition):
Honourable senators, will Senator Murray allow a question on the report?

It has to do with a topic very familiar to senators; that is, the monies that were transferred to a non-profit corporation for purposes of sustainable development before the bill to set up the foundation was passed. The Energy Committee looked at this carefully and termed the transfer of funds an affront to Parliament. The Auditor General at the time had enough information to say that she was troubled by the transfer of funds and would look into it during the summer.

As it turns out, in September, in her notes attached to the government's annual financial statements, the Auditor General elaborated at length on the policy of the government to transfer funds into non-profit corporations and, in effect, to put them at arm's length of Parliament.

At the time, some \$7 billion had been transferred into these non-profit corporations. In the current Estimates, \$250 million is to be transferred to the Canada Foundation for Innovation. In effect, well over \$8 billion will now escape parliamentary supervision.

As we saw in the budget yesterday, there will be a number of other funds to which will be transferred billions of dollars over which Parliament will have absolutely no authority. Certainly the Auditor General is not allowed to step in. This is one way not only to establish government policies on a long-term basis; it is also a way to bypass parliamentary scrutiny.

That is just a general comment. To get back to the question I want to address to Senator Murray as Chairman of the Standing Senate Committee on National Finance, the Auditor General, in her lengthy report attached to the financial statements, did say that the transfer by itself was legal, using a narrow legal interpretation. However, she pointed out that it had no parliamentary authority, none whatsoever.

The Speaker of the House of Commons, Mr. Milliken, was asked in the other place to rule on the propriety of including in Supplementary Estimates (A) the amount of \$50 million. The National Finance Committee report contains a quotation from the Speaker's ruling, which I will read. It is found on page 8 of the English version.

...no authority has ever been sought from parliament for grants totalling \$50 million made to the corporation in April of this year and does not consider that the notes in the supplementary estimates (A) concerning the disbursement of these earlier monies are sufficient to be considered as a request for approval of those grants.

The quotation continues:

...the approval that is being sought in supplementary estimates (A) cannot be deemed to include tacit approval for the earlier \$50 million grant.

• (1650)

The Speaker is saying that the request for the \$50 million is improperly included in the Supplementary Estimates. However, he allowed the debate on the Estimates to go on because he pointed out that there remained ample time for government to take corrective action by making the appropriate request of Parliament through Supplementary Estimates.

Then on December 4, and this is leading to my question, a member of Parliament asked the President of the Treasury Board where the monies are. The President of the Treasury Board replied that if the questioner is asking about the Speaker's ruling, the answer to the question is that the monies will be found in Supplementary Estimates (B). The chairman of the committee of the whole which was studying the Estimates confirmed that what

the minister said was that the \$50 million is not in Supplementary Estimates (A), which was then before the House, but will be included in Supplementary Estimates (B).

So the question is: If that \$50 million is not included in the Supplementary Estimates which are the subject of the report of the Standing Senate Committee on National Finance, how is the total amount of Supplementary Estimates in the supply bill exactly the same as the total requested in Supplementary Estimates? There should be a \$50-million discrepancy there. My assessment of the exchange in the House of Commons is that the \$50 million, by the Treasury Board President's own admission, will be included in Supplementary Estimates (B), which will come to us next spring or early summer.

When you look at the total requested in the Supplementary Estimates and the total included in the supply bill itself, they are exactly the same down to the last dollar. How could the \$50 million remain in the supply bill when the President of the Treasury Board told us that they were not included in Supplementary Estimates (A)?

Senator Murray: Honourable senators, someone in the government will have to answer the question. So far as the committee is concerned, the Treasury Board officials appeared before us after the Speaker of the House of Commons had made the decision to which the Leader of the Opposition referred.

The Hon. the Speaker: I am sorry to interrupt, but the honourable senator's 15-minute time allocation has expired.

Is leave granted for Senator Murray to continue?

Hon. Senators: Agreed.

Senator Murray: It was after Mr. Speaker Milliken had made his decision that the committee considered the entire matter. Therefore we had before us the testimony of both the Treasury Board officials and Mr. Speaker Milliken's decision. The date of December 4 is significant because we tabled our report on December 4 knowing that something had to be done by the government but not knowing what it would do. I invite your attention to page 9 of our report where we state that, in light of this ruling, the committee awaits the government's corrective action.

It was on that very day by coincidence that the question was put to Madam Robillard in the other place, and she indicated that the government would seek approval for the \$50 million expenditure later in Supplementary Estimates (B). My friend draws a connection between that \$50 million and the supply bill. He is suggesting, I take it, that there should be \$50 million less being sought by the government in the supply bill. I do not know the answer to that point. I am not sure whether the total amount in the Supplementary Estimates is, to the dollar, to be reflected in the supply bill. I presume someone in the Department of Finance or Treasury Board would have an answer.

There has been some problem with the sound, but I am sure my answer will be on the record fully. I also have an idea — perhaps wrongly — that my answer was heard, if not understood, by senators in all parts of the house. In any case, the specific question posed by Senator Lynch-Staunton would have to be answered by someone in the Department of Finance or Treasury Board. In view of the fact that the minister has agreed that the \$50 million in question should form part of a future supplementary estimate, the question is whether this supply bill ought to be for \$50 million less than it is. That is not for me to say. The committee knew that some action had to be taken and we said that we would await the government's corrective action. I will leave it at that for the moment.

Senator Lynch-Staunton: To finish my intervention, I want to assure honourable senators that a careful comparison has been made between Supplementary Estimates (A) and the appropriation bill which is on the Order Paper, and the figures contained in both are the same. I have addressed the question to Senator Murray knowing that it is not for him to give the answer. I should hope that the government has been listening to the exchange and that, when the supply bill is brought on for debate, the proposer will have an answer. Otherwise, while tradition may have it that we are not supposed to discuss supply bills, I will certainly raise the matter and engage a debate on it because the answers cannot be supplied by the Chairman of the Standing Senate Committee on National Finance.

[Translation]

Hon. Pierre Claude Nolin: My question is for Senator Murray and deals with a very specific element of the report, on page 5, the paragraph in the middle of the page:

The Canada Customs and Revenue Agency is seeking an additional \$287.9 million increase over its original appropriation of \$2.4 billion. This new request represents a 12.2% increase in the Agency's original budget.

Most of the requested funding is to address operational workload pressures and to pursue revenue generation initiatives.

This last sentence seems very vague to me. Was the Honourable Senator Murray able to discuss with officials from the Treasury Board the real nature and receive an appropriate explanation for such a convoluted wording?

Senator Murray: We were told that this amount was not related to the events of September 11, and that government expenses related to the events of September 11 would appear in the next budget. This is what happened yesterday.

In response to Senator Nolin's question, we put this very question to Treasury Board officials. They did not appear to know what the request for \$287.9 million was about. They promised to get back to us in short order with an explanation.

[English]

Hon. Pat Carney: Honourable senators, I, too, have a question for Senator Murray. This brief but excellent report does draw attention to the Senator's concern about the fact that these agencies that have been created by the government are exceeding their estimated costs. While they were originally set up on the grounds that there would be cost savings by spinning them off, that is not the case.

What is the overseeing agency that monitors the spending of these agencies? In a normal government department, there are Treasury Board rules and regulations, the Financial Administration Act, and other checks and balances. Who oversees the spending of these agencies themselves and establishes whether this growth in spending is justified?

Senator Murray: Honourable senators, that is a difficult and complex question. Some of us spoke on both the bill to create the new Canada Customs and Revenue Agency and the bill to set up Parks Canada somewhat at arm's length from the government. The short answer is they still have to come to Parliament with their Estimates. They still have to come to Parliament for money. They have more latitude in many respects — notably in the personnel and recruitment field — than do ordinary departments of government. However, they come to the House of Commons and to Parliament with their Estimates.

The whole question is one that the Standing Senate Committee on National Finance should monitor much more carefully because these agencies are relatively new, and we may see, as the years go by, other departments morphing into special agencies of this kind.

On motion of Senator Stratton, debate adjourned.

APPROPRIATION BILL NO. 3, 2001-02

SECOND READING

Hon. Hon. Isobel Finnerty: moved the second reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

She said: Honourable senators, the bill before you today, Appropriation Act No. 3, 2001-2002, provides for the release of the total of amounts set out in Supplementary Estimates (A) for 2001-2002 amounting to \$6.95 billion.

Supplementary Estimates (A) were tabled in the Senate on November 1, 2001, and referred to the Standing Senate Committee on National Finance. These are the first regular Supplementary Estimates for the fiscal year that ends on March 31, 2002.

The 2001-2002 Supplementary Estimates (A) seek Parliament's approval to spend \$4.83 billion on expenditures for 2001-2002 that were provided for within the \$167.1 billion in overall planned spending for 2001-2002, announced in the October 2000 Economic Statement and Budget Update, but not included in the 2001-2002 Main Estimates. The balance represents information to Parliament on adjustments to statutory spending that have been previously authorized by Parliament and also provided for in the Budget Update.

Some of the major items in these Supplementary Estimates are as follows. With respect to budgetary spending, the items affecting more than one organization are: \$425.9 million for 69 departments and agencies under the carry-forward provision to meet operational requirements originally provided for in 2000-2001; \$382.3 million for compensation for collective bargaining; \$216.5 million to 27 departments and agencies for incremental funding to address core operational and capital requirements; \$164.6 million to 10 departments and agencies for incremental information management and technology infrastructure requirements; \$114.4 million for the Canadian Firearms Program; \$100 million for the Sustainable Development Technology Fund; \$98.6 million for Government On-Line initiatives; \$96.9 million for public security and anti-terrorism initiatives; and \$62.5 million for the Federal Tobacco Control Strategy.

Items affecting a single organization are the following: \$550 million to Agriculture and Agri-Food Canada for contributions for agricultural risk management under the Farm Income Protection Act; \$225.3 million to the Canada Customs and Revenue Agency to address operational workload pressures and pursue revenue generation initiatives; \$221.9 million to Transport Canada to provide assistance to air carriers for losses incurred due to the temporary closure of Canadian air space, and additional payments to VIA Rail in support of an expanded capital investment program; \$152.5 million to National Defence for additional costs associated with NATO Flying Training in Canada and other professional services; \$114.8 million to Fisheries and Oceans Canada for the Fisheries Access program; \$109.7 million to the Canadian Institutes of Health Research for program enhancements; \$97.1 million to the Department of Foreign Affairs and International Trade for contributions to provinces related to softwood lumber export controls; \$74.5 million to Indian and Northern Affairs Canada for the settlement of specific claims with the Horse Lake First Nation and the Fishing Lake First Nation; \$60 million to the Canadian Broadcasting Corporation to strengthen and revitalize radio and television programs; \$57.7 million to Health Canada in support of federal hepatitis C initiatives; \$57.3 million to the Cape Breton Development Corporation for additional costs, including workforce adjustments; \$53 million to the Privy Council Office for the Office of Indian Residential Schools Resolution of Canada; and \$50 million to the Canadian International Development Agency for programming against

hunger and malnutrition through international development and nutritional institutions.

The non-budgetary item is as follows: \$6 million to Indian and Northern Affairs Canada for additional loan requirements.

The next item is information on changes to projected statutory spending. Honourable senators, \$2,122.9 million of the \$6,952.9 million in the spending identified in the Supplementary Estimates represents adjustments to projected statutory spending that had been previously authorized by Parliament and is provided for information purposes only.

The major statutory items with adjustments in the projected spending amounts are as follows: \$1,250 million to the Department of Finance Canada for a grant to the Canadian Foundation of Innovation; \$616 million to the Department of Finance Canada for transfer payments to provincial and territorial governments; \$56.4 million to the Commissioner of Federal Judicial Affairs for payment pursuant to the Judges Act; and, under non-budgetary items, \$172 million to the Department of Finance Canada for the issuance of a loan to the International Monetary Fund's Poverty Reduction and Growth Facility.

• (1710)

The major statutory items represent adjustments totalling \$2,094.4 million out of \$2,122.9 million in adjustments. The \$28.5 million balance is spread among a number of other departments and agencies. The specific details are included in the Supplementary Estimates.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I want to apologize. Had I known that we would deal with the supply bill before the report was adopted, I would have directed my question to the sponsor of the bill instead of to Senator Murray. However, I am sure the honourable senator heard what I said.

In listing the items in the bill, the honourable senator has confirmed that the \$50 million, the inclusion of which has been questioned by the Auditor General and, in particular, by Speaker Milliken, is included in the bill. While the President of the Treasury Board has said that this \$50 million will be taken care of in Supplementary Estimates (B), the question remains: How can the same \$50 million appear in two different Supplementary Estimates? Until that answer is given, honourable senators, we should be hesitant in approving this supply bill.

Senator Finnerty: Honourable senators, as has already been explained, the fiscal year does not end until March 31, 2002, at which time another supply bill will be introduced. I understand that this will be explained in that supply bill. It is ongoing until March 31.

I have every confidence in our Chairman of the National Finance Committee and in the Auditor General and that we will pursue this until we are satisfied.

Senator Lynch-Staunton: Honourable senators, I would simply hope that those responsible for preparing the Supplementary Estimates will give the government leader an answer that will be satisfactory to all of us.

Hon. Pierre Claude Nolin: Honourable senators, I, too, will wait. You heard the question that I asked Senator Murray about the Canada Customs and Revenue Agency.

In her speech, the sponsor of the bill mentioned \$225 million for the agency. In response to my question, Senator Murray told us that he did not receive a satisfactory answer from Treasury Board regarding the reason for that request. Does the sponsor of the bill have such an answer? If not, we will wait for it.

Senator Finnerty: I do not have the answer right now, but I will certainly get it for the honourable senator as soon as possible. I will make enquiries of the officials.

On motion of Senator Lynch-Staunton, debate adjourned.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the tenth report of the Standing Committee on Internal Economy, Budgets and Administration (Senate Estimates 2002-03) presented in the Senate on December 10, 2001.—(*Honourable Senator Kroft*).

Hon. Richard H. Kroft: Honourable senators, I move the adoption of the Senate's proposed budget for 2002-03, which amounts to \$63,900,850. The budget will include the following new non-discretionary spending: \$3,459,100 for expenditures resulting from the application of Bill C-28; \$300,000 for the increased costs of employee benefits; \$1,393,550 for the salary increases of employees as a consequence of collective agreements and other personnel costs; \$302,300 for parliamentary exchanges, protocol and associations; \$245,000 for senators' research and office budgets; and \$415,000 for staff and equipment required to improve security measures. Further summaries of the budget materials will be available to senators here in the chamber. Also included is a discretionary amount of \$1,215,000 for administrative resources.

Honourable senators will agree that the Senate's agenda since the beginning of this first session of the Thirty-seventh Parliament has been full, complex and challenging. To confirm this, I can advise honourable senators that, during this fiscal year alone, our work in committees has increased considerably over and above our previous five-year average. Compared to that five-year average, we project that in 2001-02 we will have held 39 per cent more meetings, produced 26 per cent more reports, spent 49 per cent more hours in committees and heard 53 per

cent more witnesses. As well, there has been a 30 per cent increase in the number of Senate sittings since the beginning of April 2001, based on a projection of our calendar to March 31, 2002. This record is a reflection of the work performed by the Senate, of which we should be justly proud. Indeed, we welcome the recent addition of two new committees, Human Rights, and National Security and Defence, which are already garnering attention for their contribution to the public policy debate in our country. We need not think too far back to recall the valuable contribution the Senate has made to important legislation and policy. The interim reports on the health of Canadians, the report on aquaculture in Canada's Atlantic and Pacific regions and the interim report on Canada's nuclear reactor safety immediately come to mind. We can also point with pride to the remarkable contribution senators made to the pre-study of the anti-terrorism bill, which encouraged the Minister of Justice to make changes to the bill.

Honourable senators, these are changing times. Our legislative responsibilities, while never light, have been deeply affected by the new world that has emerged since September 11. We have had to rethink priorities and, consequently, have been forced to focus on essential obligatory needs to sustain the work of this institution.

• (1720)

I commend the administration for having met this challenge of restraint and constraint and for having requested the barest minimum increase in the budget, even though it will mean putting on hold technological innovation and will require our workforce to meet even heavier work loads.

Honourable senators, in order to allow us to pursue our valuable work, I ask you to support the adoption of this report.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

[Translation]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the adoption of the Eighth Report of the Standing Committee on Rules, Procedures and the Rights of Parliament (*amendments to the Rules—Senators indicted and subject to judicial proceedings*) presented in the Senate on December 5, 2001.—(*Honourable Senator Nolin*).

Hon. Pierre Claude Nolin: Honourable senators, I adjourned debate yesterday for the purpose of discussing this item on the Orders of the Day with my colleagues in more detail and more seriously. The discussion was a good one.

You will be happy to hear that I am convinced that this change to the rules will protect the dignity and reputation of the Senate. It seeks to protect public confidence in Parliament. For this reason, I support the rule that is proposed.

On motion of Senator Cools, debate adjourned.

[English]

STUDY ON MATTERS RELATING TO FISHING INDUSTRY

REPORT OF FISHERIES COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on consideration of the third report (interim) of the Standing Senate Committee on Fisheries entitled: *Aquaculture in Canada's Atlantic and Pacific Regions*, deposited with the Clerk of the Senate on June 29, 2001.—(Honourable Senator Cook).

Hon. Joan Cook: Honourable senators, I rise to speak on the report entitled "Aquaculture in Canada's Atlantic and Pacific Regions" tabled by the Standing Senate Committee on Fisheries on June 29, 2001.

Fish farming is a rural-based industry that provides much needed employment and economic spinoffs in many coastal communities. During the course of our study, committee members were often told that aquaculture complements the wild traditional fishery, that it provides opportunities in the technology and service sectors and that it offers tremendous opportunities for future development. As such, proponents argue that government's approval of industry expansion should naturally follow with, for example, the establishment of new grow-out sites. Constraints to the expansion of the industry were said to cost jobs.

In 2000, the total value of Canadian aquaculture production was approximately \$611.6 million. Salmon farming represented approximately 81 per cent of that amount, or \$496 million. The economic benefits of expanding Canada's production are certainly alluring.

The Minister of Fisheries and Oceans is a very big supporter of fish farming. In fact, the day after the minister assumed his post, he indicated that aquaculture would have a very high priority. The aquaculture sector also has the minister's ear. In recognition of his support, the Canadian Aquaculture Industry Alliance, Canada's national fish farming association, announced

in May 2001 the establishment of the Herb Dhliwal Sustainable Aquaculture Award.

Some coastal communities in some regions embrace fish farming as an economic generator. However, many others have had serious misgivings. In British Columbia, where 57 per cent of the value of Canada's farmed salmon originated in the year 2000, the provincial government favours lifting a moratorium placed in 1995 on the expansion of new salmon farms.

In his speech of October 23, 2001, in this chamber, Senator Comeau remarked that the committee's aquaculture report is a snapshot in time and listed major developments that had occurred during the course of the study. On November 29, just two weeks ago, a citizens' inquiry into salmon farming in British Columbia released a report entitled "Clear Choices, Clean Waters." Headed by the Honourable Stuart M. Leggatt, a retired justice of the British Columbia Supreme Court, the salmon inquiry reportedly heard from nearly 200 witnesses in five coastal communities; however, the inquiry was boycotted by both the federal and provincial governments.

As a senator representing the province of Newfoundland, I will not make any specific comments on the situation in British Columbia. However, having said that, I do have a few general observations on two of the Leggatt inquiry's six recommendations that are important from a national standpoint.

With regard to labelling, in June, the Senate committee recommended, in recommendation number 8, that "consideration be given to the identification and labelling of aquaculture products." Your committee reported that there was a growing awareness of the need to reduce the unnecessary use of antibiotics and that many people may wish to avoid eating or handling farmed salmon that have been so treated. The committee also reported that others wish to avoid farmed salmon because of concerns about the aquaculture industry's impact on wild stocks and the marine environment. The committee also reported that, at present, labelling is at the discretion of the industry and that, because farmed salmon is seldom, if ever, labelled as such, consumers are not able to differentiate it from wild fish.

Put simply, a number of individuals and organizations are asking that the public be allowed to choose between products that are farmed and those that are not farmed. On labelling, the federal Minister of Fisheries appeared before the committee on April 4, 2000 and noted that the subject was within the mandate of other agencies, such as the Canadian Food Inspection Agency and Health Canada, but said he "would support any comprehensive labelling."

Good ideas bounce back. Last week, the Leggatt inquiry recommended that there be a requirement that farmed salmon be labelled and identified as farmed salmon. The report stated the following:

Farm salmon should be identified distinctly from wild salmon in retail outlets and restaurants so consumers can make informed choices about the products they purchase.

Some consumers may be concerned about drug residues in farm salmon or other health issues; others may want to avoid farm salmon for environmental reasons.

Farm salmon is currently labelled "fresh" or "Atlantic". For many consumers, the relevant distinction is "farm" or "wild". Mandatory labelling to identify farm salmon properly would allow consumers to make informed choices.

The B.C. Leggatt inquiry also recommended that the precautionary principle apply to regulation of the salmon farming industry. The commissioner concluded that regulators should err on the side of caution to protect important environmental values and human health and that the precautionary approach be applied to the regulation of the industry.

Last June, the Senate committee had much to say on applying the precautionary approach, commonly defined as erring on the side of caution when dealing with uncertainty. Committee members noted that the approach focuses on the degree of certainty of knowledge needed before politicians and authorities can initiate action on possible environmental problems. Even when the outcome of an activity is uncertain and scientific evidence is inconclusive, measures should be taken to avoid the potential negative or adverse effects.

• (1730)

In the traditional fisheries, the precautionary approach is a concept endorsed by the federal government. It is the cornerstone of the Oceans Act. The concept is also incorporated in a number of international commitments and agreements to which Canada is a signatory. In fact, "erring on the side of caution" or "on the side of conservation" was advocated by this committee in reports on the traditional capture fisheries tabled in 1998, 1995, 1993 and as early as 1989, almost three years before the northern cod fishery officially collapsed.

Last year, on salmon farming in B.C., the Auditor General concluded that the DFO would need to apply the precautionary approach by applying new knowledge from ongoing research in the development of new regulations; monitoring and enforcing compliance with new regulations over the long term; and assessing the effectiveness of these regulations in protecting wild salmon.

In June, the Senate committee recommended that DFO issue a written public statement on how the precautionary approach is being applied to Canada's aquaculture sector.

As many honourable senators are undoubtedly aware, much of the controversy centres on salmon farming. In Canada, the preferred method for finfish aquaculture is to use open net-cages.

While farmers have made significant progress in their management practices, the ecological impact, or footprint, of salmon farming is largely unknown. Science supports neither side of the environmental and ecological debate. This is mainly because there have been very few, if any, scientific studies.

No one knows what impacts farmed Atlantic salmon escapees and their offspring have or will have on wild salmon stocks, on either coast, on either the Atlantic or the Pacific species, or on the ecosystem generally. What is the incidence and transfer of disease in farmed and wild stocks? What are the environmental risks associated with the wastes discharged by farms? What are the cumulative impacts? What are the carrying capacities of the marine areas in question? No one knows.

The committee's report argues that, if salmon aquaculture is to expand with the support of the public and other stakeholders in the marine environment, more research will be needed. Without scientific knowledge, distrust of the industry will continue.

In this regard, the DFO has an important role to play in creating an environment in which the fish farming industry and the traditional wild fishery, Aboriginal people, conservationists, environmental groups and other stakeholders can coexist.

In addition, the department has an emerging and critical role in coastal zone management under the Oceans Act, 1997. The act provides the Minister of Fisheries and Oceans with the authority to coordinate federal involvement in all oceans-related issues. The act paves the way for the development of a comprehensive ocean strategy based on the principles of integrated management, shared stewardship, sustainable development and the precautionary approach.

Lastly, I would mention that Dr. Arthur Hanson, Canada's Oceans Ambassador, recently appeared before the Fisheries Committee on November 20 and said that our aquaculture report "had some sound recommendations."

Hon. Pat Carney: Honourable senators, I have a question for the honourable senator.

The Hon. the Speaker *pro tempore*: Will the Honourable Senator Cook accept a question?

Senator Cook: Yes.

Senator Carney: I should like to thank the honourable senator for her informative and balanced report. I think she knows that the former Senator Ray Perrault presented the report of the Fisheries Committee report to the Leggatt commission.

The senator mentioned in her remarks that the B.C. government favours lifting the moratorium on farmed-fish sites. I know the minister and the department officials, but I am not aware of any public statement to that effect. Could the senator tell me where that information comes from?

Senator Cook: I thank the honourable senator for her question. The information was provided to me from my researcher. If the honourable senator wishes, I would be pleased to confirm the accuracy or otherwise of that information.

Senator Carney: My understanding is that no decision has been announced regarding farm-fish sites and no official appeared before the Senate committee because it was deemed to be too close to the provincial election. I would ask that that statement be verified or corrected.

Senator Cook: I will check the matter out.

On motion of Senator Kinsella, for Senator Robertson, debate adjourned.

[Translation]

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:

That the Senate of Canada recommends that the Government of Canada recognize the date of August 15th as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(Honourable Senator LaPierre)

Hon. Laurier L. LaPierre: Honourable senators, I am pleased to be able to take part in the debate on this motion, which was seconded by Senator Léger.

Honourable senators:

I need to be able to love,
To live in peace and freedom,
So that all my tomorrows
Can ring out as a song of freedom,
For the sake of all my children.
This is a love
Reawakened every morning of my life,
An echo of our history,
A sound that touches me, a beloved sound,
And one I want to experience in French.

These words, honourable senators, as I hardly need tell you, are part of the lyrics of the provincial theme song of the French in New Brunswick, co-written by Albert Belzile and Étienne Deschênes.

[English]

I should like to remind honourable senators that there are two branches of the people to whom I belong. Canada is blessed with two peoples who use the French language to speak among

themselves and to others, both of whom were positioned by Champlain in the first decade of the 17th century.

The first people he brought to this land settled in what was called Arcadia, the name given to the coast founded by Giovanni da Verrazzano who was working for the French king. It is now known as Acadia. Honourable senators who remember their Greek classes, will know that it means "paradise on earth; and a paradise it is, if we bear in mind the beautiful words of Henry W. Longfellow who, in 1847, wrote:

This is the forest primeval.
The murmuring pines and the hemlocks,
Bearded with moss, and in garments green, indistinct in the twilight,
Stand like Druids of eld, with voices sad and prophetic,
Stand like harpers hoar, with beards that rest on their bosoms.
Loud from its rocky caverns, the deep-voiced neighbouring ocean
Speaks, and in accents disconsolate answers the wail of the forest.

Ye who believe in affection that hopes, and endures, and is patient,
Ye who believe in the beauty and strength of woman's devotion,
List to the mournful tradition still sung by the pines of the forest,
List to a Tale of Love in Acadie, home of the happy.

The Acadians came at the beginning of the 17th century. Champlain settled them on Île-Sainte-Croix, which I believe is now called Dochet Island, at the mouth of the St. Croix River. After a terrible winter during which too many died of scurvy, he transported them to God's paradise at Port-Royal, Annapolis, on the other side of the Bay of Fundy in what is now Nova Scotia.

There, near good-water springs, they erected their houses, planted their gardens and crops, the first ones by Europeans in Canada, and established a theatre and an *Ordre de Bon Temps*, the Order of Good Cheer, to amuse themselves, and made friends with Chief Membertou, the sagamo of about 100 Mi'kmaq who fished and hunted in and around Port-Royal.

• (1740)

In writing about the history of the Acadians, one must bear in mind that the story of the Acadians is one of bureaucratic neglect, mercantile and religious rivalries, imperial pretensions, internal struggles and cruel deportation. It is, on the other hand, an edifying chronicle of survival. The French Crown paid little attention to the tiny settlement in Acadia, revoking licences and monopolies at will. Nor did it make arrangements for its defence or for economic aid. The Jesuits in Acadia quarrelled with everyone, and the merchants in France vied with each other to assume control of the fur-trading and fishing monopolies. The English, who had founded Virginia in 1607, lay claim to the whole of the eastern seaboard of Canada, beginning the long struggle of France and Great Britain in North America. The rivalry between the two powers was accentuated with the founding of Massachusetts in 1620. After that and for the rest of the 17th century and most of the 18th, Acadia was a convenient commodity to be bartered to the highest bidder.

It seems to me that, in spite of all these hardships, at the time of "le grand dérangement" in the middle of the 18th century, 13,000 Acadians lived on their lands. Then came 1775.

In 1775, the British-Americans scattered the Acadians over the face of the earth in a terrible, racist deportation. Between October 1755 and 1763, scores of families were broken up, husbands taken from wives and young children, brothers from sisters, lovers, friends: in all, 10,000 people were forced onto British ships and exiled. A bewildered and destitute people, they were dropped off in the middle of the British colonies along the eastern seaboard.

Honourable senators, if you remember the Falkland Islands debacle between Argentina and Great Britain, you will remember that Acadians were found to have been there since that time. Many were eventually assimilated in the great melting pot of America, and those who walked from the southern colonies to Louisiana created a culture that the world still enjoys and calls Cajun.

One of the deportees from Grand-Pré may well have been Longfellow's Evangeline, about whom he writes:

Sweet was her breath as the breath of kine that feed in the meadows.
When in the harvest heat she bore to the reapers at noontide
Flagons of home-brewed ale, ah! fair in sooth was the maiden...
Wearing her Norman cap, and her kirtle of blue, and the earrings,
Brought in the olden times from France, and since, as an heirloom,
Handed down from mother to child, through long generations.
But a celestial brightness — a more ethereal beauty —

What they did in exile is a story for another day. Suffice it to say that they found each other. They survived. They made violins. They sang their songs. They danced their giges and lived their lives, waiting for the inevitable day when they would return to their lands in the paradise on earth that used to be their Acadia.

So, honourable senators, they returned between 1763 and 1880 and they founded "la nouvelle Acadie."

[Translation]

They founded this new Acadia, but they did not do so easily. It was a slow and painful process. At the end of the 18th century, they gained the right to own land. Between 1789 and 1810, they gained the right to vote. After 1830, they could be members of the Legislative Assemblies of the three Maritime colonies of Great Britain.

[English]

During the debate on Confederation, they were opposed, as were the vast majority of the people living in the Maritimes at that time. With their presence on their land —

[Translation]

They formed a collective consciousness, with their schools, colleges and newspapers.

[English]

Building upon Champlain's legacy and the memory of their ancestors, transmitted orally, they recreated and re-lived their culture. Today, it lives gloriously in many whom I know and whom I have interviewed over the years. I know the moving singer Edith Butler better than I do her colleague Angèle Arsenault, but I have interviewed them both. Their songs and their personalities sing to the heart. I have lost myself in the wonderful world of Antonine Maillet. Like so many other people, I have been filled often with Roch Voisine's music. They and the artists who came before them created a "culture vivante."

[Translation]

A culture vivante that flourishes in this House through the presence of our colleague, the Honourable Viola Léger.

[English]

She is indeed a national treasure. Her portrayal of La Sagouine is one of the greatest moments in the annals of Canadian theatre.

[Translation]

It is in tribute to her, her great talent and her friendship that I take part in this debate.

[English]

When she came for the first time to play La Sagouine in Montreal at le Théâtre du Rideau-Vert, we were all sitting there. We were wondering who this mad woman was, dressed up the way she was with this bucket that she carried around. On our laps, we held lexicons so that we would understand what honour she was telling us.

I tell you, honourable senators, that after 10 or 15 minutes we placed the lexicons on the floor because we did not need them. We needed only to look at this radiant personage, this tremendous actress, and we understood every word she told us. For that I will be eternally grateful.

Here we are today, honourable senators. August 15 is the day of the Acadians. We cannot prevent that for it already is. What we need to do, and very soon, is to have all the peoples of Canada recognize August 15 as — "la fête nationale des Acadiens et des Acadiennes."

[Translation]

Why? Because we owe it to them. They are Canadians, they enrich us daily and they take part in the life of Canada.

[English]

We owe recognition of their national day because, through that, we shall recognize their astonishing courage, their vitality of spirit, their determination to be themselves, their sense of belonging to a land which, in the words of Longfellow:

Still stands the forest primeval; but far away from its shadow,
Side by side, in their nameless graves, the lovers are sleeping.
Under the humble walls of the little Catholic churchyard,
In the heart of the city, they lie, unknown and unnoticed.
Daily the tides of life go ebbing and flowing beside them,
Thousands of throbbing hearts, where theirs are at rest and for ever,
Thousands of aching brains, where theirs no longer are busy,
Thousands of toiling hands, where theirs have ceased from their labours,
Thousands of weary feet, where theirs have completed their journey...
And by the evening fire repeat
Evangeline's story,
While from its rocky caverns the deep-voiced neighbouring ocean
Speaks, and in accents disconsolate answers the wail of the forest.

Honourable senators, vive l'Acadie.

[Translation]

Hon. Eymard G. Corbin: Honourable senators, in his treatise *De vulgari eloquentia*, Dante wrote, at Chapter VII of Book I, and I quote:

Alas, how it shames me now to recall the dishonouring of the human race! But since I can make no progress without passing that way, though a blush comes to my cheek and my spirit recoils, I shall make haste to do so.

My intervention on the motion of Honourable Rose-Marie Cool is in three parts. First, I will tell you why the arrival of the Acadians in the Madawaska — where I come from and which I had the privilege of representing for 16 years in the House of Commons — marked the end of a cruel journey and the start of a new era for an essentially good and peaceful people.

Second, I will offer you a few thoughts on the deportation of the Acadians, otherwise the motion would be denuded of its deep meaning, indeed, its historical bases.

• (1750)

Incidentally, I am surprised to see that several of my colleagues are unfamiliar with the facts.

Third, I will tell you about today's Acadia and why Acadians were not moved by a request for an apology by the Queen for the

tragic events of 1755 and the years that followed, which were called "Le Grand Dérangement," or the deportation.

This opportunity to talk about Acadia also allows me to open a window on my region. A long time ago, I read that in the Malecite language the name Madawaska means "land of the porcupine." This is not surprising, because there are many of them and they are a rather touchy lot. People of the Madawaska are a different breed. From the very beginning, the Madawaska was a land crossed by couriers, missionaries and soldiers travelling between Quebec and Acadia. After the peace treaty was signed in 1763, it became an unavoidable passage between Halifax and Quebec. At the end of the 18th century and at the beginning of the 19th century, people from the South Shore of the St. Lawrence used the grand portage between Rivière-du-Loup and the Madawaska to settle in Acadia, because the former seigniorial lands could no longer absorb settlers. The first settlers in the Madawaska were Acadians. The Malecites, who were the very first to occupy this territory, are still there.

Some Acadians settled there in the hope of:

...living in the certainty, the assurance of becoming owners and putting an end to insurmountable perplexity.

These words, which are found in Volume 1784, Series "S" of the Canadian archives, are included in a request addressed to the Governor General of Canada by Jean-Baptiste Cyr on his own behalf and on behalf of his wife and their numerous children, who at the time resided in what is now the capital of New Brunswick, Fredericton.

I repeat:

...living in the certainty, the assurance of becoming owners and putting an end to insurmountable perplexity.

These moving words reflect the suffering of these people and the stability that all people long for.

Other similar petitions were also presented to Quebec and New Brunswick authorities. These petitions also include the names of a few Canadians, although most were Acadians settlers in Sainte-Anne-des-Pays-Bas — Fredericton, as I have already said. The old Acadian cemetery of Sainte-Anne-des-Pays-Bas was rediscovered a few years ago. It is adjacent to the official residence of the Lieutenant-Governor of New Brunswick.

Saint-Basile, some 180 miles upstream from Fredericton in the beautiful upper valley of the Saint John River is commonly known as the cradle of the Madawaska. Saint-Basile is now part of Edmundston. The Acadians know good soil when they see it. The fact that the settlements of the Loyalist refugees from the American Revolution, who had recently arrived in the lower part of the province, were so far from the Madawaska area was a determining factor. Scots, Irish and English eventually joined the Acadians of the Madawaska and added to the convivial mix.

[Senator LaPierre]

The Madawaska remained an undefined territory for 129 years: from the Treaty of Utrecht in 1713, when Acadia became English, until the Ashburton-Webster Treaty in 1842, because agreement could not be reached on the meaning of the word “uplands” of the St. Lawrence in order to draw the border. It was some years later that the boundary was drawn between New Brunswick and Quebec. The geometric carving up of the map is intriguing. Monetary interests were the driving force, that is clear.

History, which until then had treated the Acadians so badly, dealt them one last blow in 1842. One fine morning, the people of the Madawaska awoke to find that those of them on one side of the river were citizens of the United States of America and those on the other side were subjects of the British Crown.

Thereafter, things generally went along fairly well for just about everybody. Each citizen was finally given inalienable title to a parcel of land, including my Canadian ancestor, my great-grandfather, Amable Corbin, originally from Rivière-Ouelle, in Quebec.

I will now go back even further in time. I will say — as so many others have before me — that we do not have the right to silence history, even if, to again quote from Dante:

...a blush comes to my cheek and my spirit recoils...

Although I understand Senator Losier-Cool's desire to emphasize the positive in the wording of her motion — which Senator Viola Léger also illustrated very well in her first speech — I think it important and useful to recall certain facts, without which this motion would not be very different from many others like it.

The fundamental difference is 1755, and the years following the expulsion and searching out of the Acadians: a dark atrocity indelibly etched in the collective memory of Acadians and of all right-thinking people.

There is not, to my knowledge, a single descendant of these Acadians dragged from their patrimonial soil — their land and livestock stolen, their homes and barns burned, children separated from parents, husbands from wives, herded onto unseaworthy ships to be dispersed here and there from the Atlantic to the Gulf of Mexico, others fleeing by land, dispossessed, stripped of their belongings, driven away, hiding in the forest, hunted down like wild animals, suffering and dying of hunger — who has forgotten the deportation, the “Grand Dérangement.”

This was the work of heartless men with greed in their souls, sad beings. The deportation of the Acadians remains one of the many sombre, eternal memorials to greed and stupidity throughout the world.

The difference is that this took place here, in what is now known as Nova Scotia, New Brunswick, Prince Edward Island and elsewhere in eastern Canada. This was a singular and unequalled tragedy in the history of Canada. It is important to grasp this fact in order to appreciate the meaning of the motion now before us.

At the same time as the expulsion of the Acadians, on November 1, 1755, a powerful earthquake rocked Lisbon and destroyed a large part of the Portuguese capital. The voices of preachers rang out from pulpits across Europe, proclaiming that the destruction of this city was proof of divine justice. This led the caustic François Mari Arouet, better known as Voltaire, to wonder whether Lisbon lived in greater sin than Paris or London.

And so it was that the deportation of the Acadians went virtually unnoticed in the Europe of philosophers and knowledgeable encyclopedists of the Age of Enlightenment, with the exception of a few very well informed political and military backrooms. It was nothing but a brief news item, lost in the bottom of a diplomatic bag. Public opinion would not have been much in any case. It was resting up for a more cataclysmic shake-up that would take place some 45 years later. History is full of this type of twist. So Voltaire, the “great expert” on snow-bound lands, deprived history of his witty comments on the deportation.

But was there anything in this? Is it possible to draw a parallel between Lisbon and Acadia? Was this divine retribution against the Acadians? What had they done to deserve such a reckoning? Nothing. They simply wanted to live in peace, without having to compromise their conscience, without having to give up their right to ownership because of an iconoclastic oath. May God forgive me for saying it, but divine justice had nothing to do with it.

The injustice of man and greed were the causes of the “Grand Dérangement,” which was carefully planned for a long time and with the blessing of the Lords of Commerce for the most base satisfaction of the New England mob, the ancestors of those who would later make trouble for in the upper Saint John valley in the Madawaska, in the early 1800s.

• (1800)

The Hon. the Speaker *pro tempore*: I am sorry to have to interrupt Senator Corbin, but I must point out that it is now six o'clock. Are honourable senators agreeable that we not see the clock?

Hon. Senators: Agreed.

Senator Corbin: After the Seven Years War, a number of Acadians returned, with difficulty, painfully, after months and years of suffering. Their lands — some of the most fertile in Canada — had been quickly taken over and worked by newcomers from New England. Most Acadians settled wherever they could, cleared land once again, and started new lives. They grouped together to help each other out. They have multiplied to such an extent that now there are large numbers of Acadians, not just in the Maritime provinces but also on the Îles-de-la-Madeleine, in the Gaspé and in Quebec — the claim is made that there are more in Quebec than in all of the Maritime provinces put together — as well as in the National Capital Region, and everywhere else in the country. Many Canadians from all kinds of backgrounds take pride in claiming an Acadian in their ancestry, as did Senator Kinsella the other day.

I will now move on to the third part of my speech, the part about the present and the future. People ask where Acadia is located. I could give a reply along the same lines as Alfred Jarry's ubuesque description of Poland as "a country that is nowhere." But no, Acadia is, instead, wherever there are Acadians. Acadia is also a state of mind.

Senator Rose-Marie Losier-Cool, who is the sponsor of that motion, and Senator Viola Léger told you a lot about today's Acadians, who live fully in the present and who look to the future with confidence. They are right to want to celebrate the resurgence of the Acadians and their culture, just like the Phoenix rises from its ashes. According to the Ethiopian legend, this mythological bird would live another 1461 years before again being consumed by flames. The Acadians will never again have to suffer again the affront of 246 years ago.

When we think about all the challenges that Acadians who came back home had to face, when we think about the successes of their descendants, about their numerous contributions to the building of our nation, and particularly their great loyalty in spite of all that happened to them, we understand why they enthusiastically celebrate their national holiday on August 15, and why they are so proud of their tricolour flag with the star.

There is every reason to celebrate this Acadia, which goes beyond a narrow geopolitical framework. Indeed, Acadia is about arts, letters, media, business, trade, politics, sciences, liberal professions, the legal profession, education and spiritual life. If the Acadians were able to overcome the obstacles they had to face throughout history, it is because of their deep faith and dedicated educators. The current generation must never forget that. I personally benefitted from it. If the Acadians are so positive and confident, it is because of their institutions.

What are we to think about the recent vote held in the other place on a motion asking the Crown to apologize for how Acadians were treated in 1755? The motion was rejected by the majority. I suspect it was for as many personal reasons, often diametrically opposed, as there are individuals.

There are two reasons I would not have supported this motion. I really think that apologies are not something you beg for. An offending party must above all recognize the seriousness of the offence, the injustice done, and repent spontaneously, if his sincerity is to be believed.

If the offending party apologizes only in response to pressure, the apology — if apology there was — would in no way be motivated by an admission of wrongdoing. It would be typical of the absolutistic attitude of a sovereign who is free to treat his subjects as he wishes. It would be meaningless and purely arbitrary. Frankly, it is the kind of excuse I could do without. This is the view of the great Argentinian writer Jorge Luis Borges, and I share it.

[Senator Corbin]

Modern Acadia, progressive and energetic, is an undeniable fact in the Canada of today. Moreover, it shines brightly beyond our borders. It does not need to apologize for its existence or be apologized to in order to affirm itself and say to the world: "We exist."

Last spring, I spoke to you about an event reported in the wonderful Prince Edward Island weekly *La Voix Acadienne*. In the article, a Protestant pastor in Southampton, England, apologized publicly "on behalf of his people" to an Acadian community, whose members were assembled in the parish church for the Sunday service, for "all the harm done to the Acadian people by his government in 1755." The most astonishing thing about this spontaneous act of the soul was that the pastor had only just learned of the fate that had befallen the Acadians. What honesty! What an amazing example!

The government should declare August 15 the fête nationale des Acadiens et Acadiennes, who deserve the admiration of all Canadians for their vitality, their courage and their loyalty. I would like to congratulate my "protégée," Senator Rose-Marie Losier-Cool, for her initiative.

And finally, I would like to congratulate our former colleague, the Honourable Roméo LeBlanc, the first Acadian to become the Governor General of Canada, who is now the new Chancellor of the Université de Moncton, the Acadian university, located in the city that bears the name of one of those who sarched out Acadians. History is so funny! Long live Acadia!

Hon. Gerald J. Comeau: Honourable senators, may I ask a question of Senator Corbin?

The Hon. the Speaker *pro tempore*: Honourable senators, Senator Corbin's time has expired. Do you give leave for Senator Comeau to ask his question?

The Hon. Fernand Robichaud (Deputy Leader of the Government): Leave is granted for a question and an answer.

Hon. Gerald J. Comeau: Honourable senators, did I hear correctly when I heard Senator Corbin say that there was only one Acadian university in the Atlantic provinces?

Senator Corbin: Honourable senators, my apologies. I should have known, since I taught at the Collège Sainte-Anne, now the Université Sainte-Anne, on the lovely baie Sainte-Marie. There are other Acadian universities, including one in Louisiana. I thank Senator Comeau for correcting me. It was an omission on my part.

On motion of Senator Léger, for Senator Day, debate adjourned.

[English]

[Earlier]

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Peter A. Stollery: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Foreign Affairs have power to sit while the Senate is sitting today, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker pro tempore: Honourable senators, is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker pro tempore: Honourable senators, is it your pleasure to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[Translation]

PARLIAMENT OF CANADA ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker pro tempore: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons, which reads as follows:

House of Commons

Canada

Tuesday, December 11, 2001

AMENDMENT made by the House of Commons to Bill S-10, passed by the Senate, entitled: "An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate)"

1. Page 1, Clause 1

(a) replace, in the English version, lines 7 to 9 on page 1 with the following:

"75.1 (1) There is hereby established the position of Parliamentary Poet Laureate, the holder of which is an officer of the Library of Parliament"

(b) replace lines 20 to 30 on page 1, and line 1 on page 2, with the following:

"(3) The Parliamentary Poet Laureate holds office for a term not exceeding two years, at the pleasure of the Speaker of the Senate and the Speaker of the House of Commons acting together.

(4) The Parliamentary Poet Laureate may"

WILLIAM CORBETT
Clerk of the House of Commons

The Hon. the Speaker pro tempore: Honourable senators, when shall these amendments be taken into consideration?

On motion of Senator Grafstein, consideration of the amendments to the bill placed on the Orders of the Day of the next sitting of the Senate.

[English]

• (1810)

ENDING CYCLE OF VIOLENCE IN MIDDLE EAST

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator De Bané, P.C., calling the attention of the Senate to his recommendation for ending the atrocious cycle of violence raging now in the Middle East.—(*Honourable Senator Finestone, P.C.*).

Hon. Sheila Finestone: Honourable senators, like all honourable senators, I bring to this place a collage of experience and perspectives that combine to make my insights uniquely mine. I am a committed parliamentarian, not just a legislator. I am a devoted mother, not just a parent. I am a woman, but that alone does not define me. I am a passionate Québécoise, but my views are not limited to a provincial perspective. I am a proud Jew, but my world view is liberated by my religious-held legacy, not constrained by it. All these dimensions shape my orientation to issues that come before us in this place. When I reflect on the challenge facing the Middle East, I find that I must draw on all of these facets when considering the potential role Canada can play in ameliorating the desperate situation facing the peoples of that region, some of whom are my liberal brothers and sisters; and others, who, in every sense of the word, are my cousins.

I note the comments offered by my colleague and I thank the Honourable Senator Pierre De Bané. In many respects, I found his remarks not only thoughtful, but also free of the antagonism that so often characterizes discussion of these issues. The parliamentarian in me sees in this a key to navigating the mind field that is the Middle East, a particularly Canadian recipe. Our approach to the Middle East must be founded on the proposition that a resolution to the conflict does not entail a zero sum gain. All must be winners or all are doomed to be losers.

The mother in me is keenly aware that, when we speak of losers in the context of the current terror and violence that plagues Israel and the Palestinian authority areas, we are not speaking of a gain. We speak of losses that are permanent in nature. We speak of lost innocence and lost youth that cannot be retrieved. Too often — indeed, virtually daily — they speak of and must mourn the youth who are lost forever.

If this pattern of terror and retribution is to be halted, we must impress on the regional players another inherently Canadian value. It is one that every mother seeks to impart to her children: the quality of respect. Our efforts must be directed at encouraging both Israelis and Palestinians to consider, in a genuine and meaningful way, the heartfelt aspirations of the other, and replacing the caricatures inspired by fear and hate with real faces who yearn for respect and validation.

Canada's dialogue fund, which operates under the auspices of the Department of Foreign Affairs, represents a wonderful way to break down some of those barriers and fosters a process of humanizing those who have seen each other only as foes. Such a transformation, the replacement of one perception with another far more constructive one, requires a strength and resoluteness that speaks to the woman in me.

Within this parliamentary precinct, we have an inspiring monument to the capacity of women to be real agents of social change. So, too, must our endeavours in contributing to a new atmosphere in the region be directed at women. If the will to strive for peace cannot readily be found in the corridors of power — when, unfortunately, this seems to be the case, with nine failures to date — then we must help facilitate the development of that will from within that element that serves as the anchor of both societies: women. They represent the forgotten element in the equation, and we have an opportunity to stimulate the recognition of the unique contribution they can offer.

The Québécoise in me understands the role of national pride. It is precisely because of that sensitivity that I can appreciate the pride that rests in the hearts of others. I share with many the knowledge that "distinct" does not necessarily equate with "exclusive," and that ultimately my strength derives from validating that which is unique and distinct about others.

The art of compromise may not be uniquely Canadian but it is a *modus operandi* that we know well and cherish. This, too, then, represents a Canadian value that should colour our approach to intervention in the Middle East.

There have been compromises in the Palestinian-Israeli relationship; some of them historic. Tragically, others seem to have been fleeting. We must convince them not only of the need to move toward compromise but also that success depends on sustaining the spirit of compromise, of continuing dialogue rather than resorting to violence, of searching for the path out of the maze rather than travelling toward a figurative and literal dead end.

Honourable senators, despair is tantamount to a sin in Jewish tradition. While yielding to dejection might be understandable reaction to recent events in the Middle East, it is not an indulgence that we dare permit ourselves. Judaism attaches supreme importance to the concept of honesty. I submit that. Ultimately, Canadian involvement in the quest for Middle East peace, emphasizing all the values I referred to earlier, must be characterized by scrupulous attention to the imperative of honesty. As John F. Kennedy observed, to state the facts frankly is not to despair for the future nor to indict the past.

Canadians are often referred to as "honest brokers." And that is the role we desire for ourselves. It implies a willingness to become involved in the process. Successive Canadian governments have signalled such a willingness. However, it demands that our involvement be honest. It requires us to value honesty in our assessment of Middle East developments above our desire to be players. I am sick of us just being players. A balanced approach should never mean a constrained engagement.

As I approach the conclusion of this chapter in my life, I confess to my sadness and my profound disappointment that a dream that 18 months ago at Camp David seemed so close, now appears to be distant.

• (1820)

There is a Jewish expression that I am sure can find a parallel in many cultures: "Words from the heart penetrate the heart."

I have shared what I believe is a practical and helpful blueprint for how an unbiased, independent and fair-minded Canada can play a productive role in bringing the dream of Middle East peace within the grasp of Israelis and Palestinians. If the efforts of Canadians are characterized by the same quality and sincerity that I hope I was able to convey today, I am generally encouraged that such an effort will be richly rewarded, and I pray it is so.

As I speak, Jews the world over are celebrating Hanukkah, the festival of lights. The menorah reminds us of the imperative that falls to us all to contribute to lighting up the world and dispelling the shroud of ignorance, intolerance and hatred. We also may derive a lesson from the coincidence of Hanukkah, Ramadan and the Christmas season. Each of the faith communities that have a special connection to Israel must join together in the quest for peace. That will truly illuminate the world.

Hon. Senators: Hear, hear!

On motion of Senator Prud'homme, debate adjourned.

CANADA LOVES NEW YORK RALLY

INQUIRY—DEBATE ADJOURNED

Hon. Jeremiah S. Grafstein rose pursuant to notice of December 6, 2001:

That he will call the attention of the Senate to “The Miracle on 52nd Street”, the Canada Loves New York Rally in New York City on December 1, 2001.

He said: Honourable senators, “Miracle on 52nd Street,” the headline in the Toronto *Sun*, aptly described the Canada Loves New York Rally that erupted at the Roseland Ballroom on 52nd Street in New York on Saturday December 1, 2001. The headline was accurate. It was a “grassroots” miracle.

After September 11, Canadians shared the pain and tragedy with Americans. Canadians wondered what to do. As Co-chair of the Canada-U.S. Inter-Parliamentary Group, I called colleagues and friends in the American Congress, both in Washington and New York, to commiserate. All were depressed and distracted by the situation amplified by the elaborate security checks necessary when they entered their own offices on Capitol Hill and days later by the anthrax scare that immobilized their offices and staff even further. Congressmen who lived in New York were confronted with all the problems in Washington, adding to the daily sorrow of living in New York. Canadians shared these sorrows and events deeply and poignantly, as it had happened to some of them.

What to do to show solidarity and support? The first idea was to organize a mass rally and benefit concert at the Skydome in Toronto to raise contributions for families of the victims. A few days after September 11, the Prime Minister held an open-air service where over 100,000 people gathered on Parliament Hill. The idea for a benefit concert received no traction as it was quickly overtaken by other concerts.

Friend and producer Gabor Apor said, “Jerry your efforts are misplaced. You should organize something in New York.” We approached municipal officials who balked because they felt that such an effort would be perceived as counterproductive since tourism in Canada was in a dive. One leading businessman argued that such an effort would be misdirected and would be misunderstood in Toronto. Canadian retail sales were spiralling downward. We felt otherwise. A strong message had to be made in New York City, the media capital in the world, that we had to get things speedily back to normal or both our economies would cocoon and slide into recession. The terrorism threat was debilitating consumer confidence on both sides of the border.

Then, honourable senators, Mayor Giuliani made his magnificent speech at the United Nations, inviting those who wished to help America to come to enjoy New York and help get

things back to normal. My wife Carole said to me, “Stop moping about this. Let’s organize some volunteers.”

A few days later, a handful of outstanding community volunteer leaders from health to the arts in Toronto were called together. They all enthusiastically endorsed the idea, knitted their various talents together to make it happen, organized a non-stop committee and set up an office. Others were quickly and easily added. Several undertook to raise out-of-pocket costs. One suggested we needed media support, and an advertising firm was contacted by a key volunteer to contribute the creative work under the direction of the committee. They generously agreed to donate their services to the committee. Another thought that a fire van to replace one of those demolished should be contributed to the New York Fire Department, and she quickly obtained a van as a donation.

Publishers of the leading newspapers in Toronto were called and full-page ads were requested. They all quickly and generously agreed. Leading executives in television and radio quickly agreed as well to contribute free media time. A wonderful log was designed. Print ads were created and revamped to suit the committee’s objectives. An ad was devised with Canadian stars in entertainment and sports produced by a Canadian producer, all of whom volunteered their time and services. They quickly congregated across Canada and in New York and L.A. to tape 30- and 60-second commercials. Street media, elevator and bus signs were generously donated after quick calls. I asked the Prime Minister if he would join in the commercial and he spontaneously agreed.

Another key volunteer suggested that the ad might be shown in movie theatres. A movie theatre executive was invited as a volunteer and agreed not only to have the cost of translating the commercial into film donated, but also to ensure it was launched with the Harry Potter movie about to debut in cinemas across Canada.

The committee agreed that November 30 to December 2, between the American Thanksgiving and Christmas, would be dubbed the “Canada Loves New York Weekend.”

We approached Air Canada. They generously came up with a special package and then agreed that the package would apply not only to Toronto but also to Ottawa and Montreal. People in Vancouver, Halifax and other cities heard about the idea, and so Air Canada added special rates to those cities and other parts of Canada as well. A hotel chain in New York and Canada volunteered to obtain discount hotel rates in New York. Another suggested that bus companies selling cut-rate packages should be contacted in order to ensure that students and others would be able to come to New York on an affordable basis.

Everyone said “yes.” No one said “no.”

Old friends in Montreal were contacted and conscripted. Then Senator Hervieux-Payette called and said that others in Montreal wished to join this effort as well, and a vigorous, high-powered, eminent organization of volunteers was quickly formed there. They speedily produced ads in French for both print and broadcast. This followed with a lively committee organized right here in Ottawa. Other groups across Canada and the United States, as they heard about the rally, joined as well.

A prominent Canadian living in New York was approached and a robust, dynamic volunteer committee of young Canadian professionals and executives working in New York was quickly established there. They worked non-stop from the very start.

Since we discovered that hundreds of thousands of Canadians live within Greater New York, the Committee felt it was important that Canadians coming from across Canada should converge with Canadians living in Greater New York.

With barely one month to organize the event, the committee concluded that the presentation of the van should be made to Mayor Giuliani and the Chief of the NYFD. Ambassadors in Washington and Ottawa were enlisted, as were two ranking American congressmen, both great friends of Canada. Contact was made with the mayor's office with an invitation for him to attend a rally that would take place on December 1.

A frantic search discovered that the historic Roseland Ballroom was available. The New York owner was contacted and generously made the ballroom available at very nominal cost. Venue insurance was donated by a key volunteer's Canadian firm in New York. A Web site was created and an 800 number was donated in order to focus all the outreach activities. The Web site received thousands of hits from across Canada and the United States.

Reaching the tens of thousands of Canadians who lived in New York was a daunting challenge. One international magazine donated an ad in its Manhattan edition. Use of e-mail was deployed. It just was not enough.

We called one of the owners of the large screens in Times Square and told our story. He agreed not only to provide time on his screen, but volunteered to obtain the assent of all other screen owners in Times Square to broadcast our message in New York as well.

• (1830)

Another key New York volunteer obtained access to the Jumbotron at Madison Square Garden to broadcast our call for the rally there. Yet another persuaded the Empire State Building to be lit up in Canadian colours, and it was done on November 29.

Mayor Giuliani graciously issued a proclamation which officially declared December 1 Canada Loves New York Day in

New York. Then the White House was contacted and President Bush promptly issued a presidential message that was put on the wire services commending the Canada Loves New York Committee for its efforts.

Let me quote briefly from President Bush's message. He said:

The United States and Canada are strongly linked by ties of family, friendship, trade, and shared values. Our countries have stood shoulder to shoulder in war, peace, trial, and triumph, and we again stand together today to defeat terrorism. I applaud the "Canada Loves New York" Committee and the Canadian people for making this event possible in celebration of our solidarity. By responding to Mayor Giuliani's invitation to come to New York, you demonstrate your love for this remarkable city and build on the special heritage our countries share as lands of freedom and opportunity.

The committee felt that, if we could induce 3,000 to 4,000 Canadians to attend, it would send a wonderful message across America and Canada. All agreed it was essential to snap things back to normal, to overcome the fear of flying and resume air travel, and to help thaw consumer paralysis, so evident in both the United States and Canada.

Canadian artists, including opera singers working in New York, were enlisted to donate their talent.

Senator Hervieux-Payette who helped organize the Montreal committee insisted that a longer show especially for Quebecers with more Canadian talent was necessary. Thus, a wider panorama of Canadian talent was sought and quickly assembled with the help of volunteers in Canada and especially in New York.

Pamela Wallin was hastily called upon for her contribution as MC. With her excellent, ebullient talents, she helped make the rally memorable.

At the last moment, the committee was approached by rank and file policemen in Toronto who had raised over \$100,000 by selling over 15,000 T-shirts door to door. They wished to hand the cheque directly to the NYPD Benevolent Fund for Victims. They wanted to ensure that the money reached the right source. We agreed to have them join us in the presentation ceremony. We invited the Police Chief and the Fire Chief of Toronto and their counterparts in New York to join the presentation.

I then approached Charles Pachter, one of Canada's leading artists, to create a commemorative painting for this event. His generous gift would be transformed into a commemorative poster and given to Canadians attending the rally as a lasting souvenir. Some 5,000 were printed. The first of the three artist's proofs of this emotive painting was to be presented to Mayor Giuliani, and later one to President Bush and one to Prime Minister Chrétien.

A Canadian clothing company owner designed and produced a special "Canada Loves New York" cap to be given to those attending the rally, and volunteered on the committee himself. He also deployed, through his e-mail system, extensive lists, and all volunteers helped enlist other through e-mail lists as well.

The Prime Minister agreed to a photo opportunity boarding a bus in front of Parliament Hill to help promote the event. It was covered by all the media across Canada and picked up by American television to help boost public awareness in both Canada and the United States. Special postcards of the Pachter painting were generously printed by yet another key volunteer and were handed out on airplanes, buses and hotels as an invitation to the rally.

University newspapers in Ontario and Quebec were called upon for their help and support, and they gave it.

The media in both Canada and the United States, especially the networks, allowed us to boost our activities in the days leading up to the rally.

Public relations experts volunteered their invaluable services, consuming virtually all of their time.

As December 1 approached, members of the committee did not know what to expect, or even how to calculate how many would come. We had no accurate way of predicting. The arm of volunteers was overwhelmed and gratified. The doors were to open at 1:30 p.m. at the Roseland Ballroom.

To our surprise, the lineup of Canadians started at 9 a.m., on 52nd Street, and then streamed along 53rd Street, 54th Street, 56th Street, 57th Street, 58th Street, 59th Street, 60th Street, and beyond. Canadians then lined up along 8th Avenue and Broadway. The various estimates concluded that up to 26,000 Canadians converged around the Roseland for the rally. Indeed, 53rd Street was blocked off. Those who were unable to enter the ballroom, or the festoon-closed-off 53rd Street, where a Jumbotron was hastily added, lingered and then moved happily on to enjoy the sights and sounds of New York. Not one complaint was heard.

Canadians had come from as far as Whitehorse and Newfoundland for the weekend. Many did not get even close to the ballroom — and not one Canadian complained. The tough New York police officers, charmed and disarmed, marvelled at the patience, politeness and the genial spirit of the thousands and thousands of Canadians who lined up for hours and still could not witness the rally.

Two red-coated Mounties became instant celebrities at the Roseland and as they strolled along Broadway.

For me, the most poignant story centred on a group of young disabled Canadians from Toronto's Variety Village who wanted to come to the rally. A key volunteer quickly arranged to have bus and train facilities donated. These young disabled people travelled for 15 hours on Friday, November 30 to attend the rally. Given a prominent place, they joyously wrapped themselves in Canadian flags, and were painted in the Canadian colours.

The Prime Minister, on a trade mission in the southwest United States, completing in Los Angeles on November 30, the day before the rally, made a special detour in order to join the thousands and thousands of Canadians who had come to participate in the Canada Loves New York Day. He was cheered and welcomed on the crowded streets of New York by his fellow Canadians.

The finality of the presentation was marked by three Canadian opera singers who sang a haunting rendition of *God Bless America*. There was not a dry eye inside or outside of the room. The Fire Chief of New York, with tears in his eyes, thanked us for such an inspiring and emotional event. The Chief of the NYPD was equally overwhelmed. Mayor Giuliani whispered to me after the event that it was one of the most inspirational moments he had experienced since September 11. He said he was simply overwhelmed.

At the end of the presentation, I asked the mayor publicly to make one promise. When things got back to normal, when things were running smoothly in New York, we invited him, all New Yorkers and all Americans to come and visit Canada. He enthusiastically accepted.

As Canadians left the Roseland Ballroom and drifted away from the surrounding area, Mayor Giuliani thanked me again for our committee's organizational efforts. I told him that his appreciation for our efforts was misplaced. Yes, it was all the volunteers who worked so selflessly and quickly to facilitate a response to his most compelling invitation at the United Nations. Most of all, I told him, the volunteers discovered that all you have to do is ask Canadians to do the right thing and then move out of the way. They will do it and do it in overwhelming numbers! Just trust the Canadian people and they will surprise you every time.

On Saturday, December 1, tens of millions of Americans and Canadians on both sides of the border and overseas witnessed, via television and by listening to the radio, the "Miracle On 52nd Street." An all-Canadian grassroots miracle did take place in New York City. God Bless Canada. God Bless America.

Hon. Senators: Hear, hear!

On motion of Senator Grafstein, for Senator Hervieux-Payette, debate adjourned.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT
ON STUDY OF STATE OF HEALTH CARE SYSTEM

Hon. Michael Kirby, pursuant to notice of
November 29, 2001, moved:

That, notwithstanding the Order of the Senate adopted on
March 1, 2001, the Standing Senate Committee on Social

Affairs, Science and Technology, which was authorized to
examine and report upon the state of the health care system
in Canada, be empowered to present its final report no later
than June 30, 2003.

Motion agreed to.

The Senate adjourned until Wednesday, December 12, 2001, at
1:30 p.m.

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OFFICIAL REPORT
(HANSARD)

Wednesday, December 12, 2001

—
THE HONOURABLE DAN HAYS
SPEAKER

JAN 29 2002

CONTENTS

(Daily index of proceedings appears at back of this issue.)

OFFICIAL REPORT

CORRECTIONS

Hon. Eymard G. Corbin: Honourable senators, I wish to make two corrections to the English version of the speech that I made yesterday. On page 1978 of the French version, in the third line of the fifth paragraph, I said, and I quote: "La motion fut rejetée par une majorité ..." The English version reads as follows: "The motion was rejected by the majority."

That should read "a majority."

Second, and more serious is the translation of a statement from French to English on the same page, the fourth paragraph, last line, I say: "Quel revirement de l'histoire." The English version reads, "History is so funny." I do not think the history of the Acadians is funny. That should, in proper and good English, read either "Another of history's ironic twists," or even better, "What a historical reversal."

The Hon. the Speaker: Honourable Senator Corbin, can you choose one of the two before I ask for agreement to make the change?

Senator Corbin: I do not claim expertise in English but I prefer the second as reflecting the French text.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

THE SENATE

Wednesday, December 12, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

RICHARD D. PARSONS

APPOINTMENT TO CHIEF EXECUTIVE OFFICER
OF AOL TIME WARNER

Hon. Donald H. Oliver: Honourable senators, I rise today to call your attention to a significant achievement in corporate America.

Jerry Levine, a powerhouse in the media business and President of AOL Time Warner — with net annual revenues approaching U.S. \$40 million — has announced his resignation and has hand-picked the distinguished and charismatic Mr. Richard D. Parsons as his successor.

Honourable senators, Mr. Parsons is Black. He will now join a small but expanding group of Blacks that head major corporations. Mr. Parsons, at age 53, is the first African-American CEO of a major media conglomerate. As *The New York Times* said, he will now have the “daunting job of making a merger conceived in the soaring Internet economy come to age during an economic slump for old-line and online media companies alike.”

Honourable senators, this is truly a remarkable success story. Of interest to me is the fact that we have a native New Yorker who comes from a working-class background, and he earned the highest score of anyone taking the bar exam in New York in 1971. His academic brilliance and hard work caught the attention of Nelson Rockefeller, who took his protégé to Washington when President Gerald Ford named him vice-president.

Mr. Parsons later launched a successful law career but soon became intrigued by business. In 1991, Mr. Parsons was invited to join the Time Warner board of directors and became the company's president in 1995. He won praise in his handling of sensitive negotiations and relationships with regulators and lawmakers. Mr. Parsons is known as an executive with a decidedly non-confrontational management style.

Mr. Parsons is very aware that he is one of the U.S.A.'s most prominent African-American executives. He believes “if I can serve to inspire one or more young people of African-American descent to say ‘hey it is it possible to achieve,’ I’ll feel that I’ve met that responsibility.” Mr. Parsons has never forgotten his commitment to the community. He has and continues to work on political and civic issues in order to make a difference.

I bring Mr. Parson's rise to power as chief executive officer in one of North America's largest companies to the attention of honourable senators because this is a remarkable achievement for Blacks and minorities. When a minority breaks through the glass ceiling of the corporate world to a position of real power, it is a proud day for all of us in North America.

ANTI-TERRORISM BILL

OPINION IN OPPOSITION

Hon. John G. Bryden: Honourable senators, I wanted to speak on an article that appeared in *The Globe and Mail* of yesterday morning, which warrants a response. I would have spoken yesterday, but we ran out of time. Since it relates to work that we have been doing in this chamber, I think the best place to make the response is here.

The article is written by Mr. Clayton Ruby, a Toronto lawyer and well-known civil rights activist. It appeared on the editorial page of *The Globe and Mail* yesterday. It is headed “When lawyers should fight the law.” The main law in question is Bill C-36, the anti-terrorism bill.

Senator Kinsella: He has that right.

Senator Bryden: Mr. Ruby, in his piece, appears to base his opinion on the opinions in the brief submitted by the Federation of Law Societies of Canada, which is based on the opinion of the Law Society of Upper Canada, which represents the Ontario bar, which is based on an opinion written by their legal counsel. However, it is interesting to note that throughout Mr. Ruby's lengthy opinion, he does not refer to any clauses or quotations from Bill C-36 itself. Mr. Ruby argues that lawyers care deeply about the rule of law and the threat to it that this legislation presents.

Honourable senators, Bill C-36 does not threaten the rule of law. Many lawyers, a number of whom testified before us last week, were very clear.

The Hon. the Speaker: Honourable Senator Bryden, I rise to draw your attention to the rule with respect to Senators' Statements. They are confined to those matters for which there are no other opportunities to address an issue. Bill C-36 is on our Order Paper. Accordingly, the proper time to address this matter is when Bill C-36 is called.

Senator Kinsella: It is all in the rules. We have rules here.

Senator Bryden: Your Honour, where on the Order Paper does the opinion entitled “When lawyers should fight the law” by Mr. Ruby appear?

Senator Kinsella: Do not question His Honour.

• (1340)

The Hon. the Speaker: The question is whether the honourable senator is speaking about something that he does not have an opportunity to address under another order. Rule 22(4), states:

When "Senators' Statements" has been called, Senators may, without notice, raise matters they consider need to be brought to the urgent attention of the Senate. In particular, Senators' statements should relate to matters which are of public consequence and for which the rules and the practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate. In making such statements, a Senator shall not anticipate consideration of any Order of the Day and shall be bound by the usual rules governing the propriety of debate. Matters raised during this period shall not be subject to debate.

In that the honourable senator's comments relate to Bill C-36, that matter is on our Order Paper. While there is an opportunity to relate it to an article in a newspaper, I find that the proper place to deal with the matter is under the heading "Bill C-36."

Senator Bryden: Is that your finding, Your Honour?

The Hon. the Speaker: Yes. I must make a decision and that is it, Honourable Senator Bryden.

HUMAN RIGHTS DEFENDERS

AMNESTY INTERNATIONAL SOLIDARITY QUILT PROJECT

Hon. Lois M. Wilson: Honourable senators, in the last few days, we heard strong messages celebrating International Human Rights Day, all of which rejoiced my heart. On Monday, there was a meeting of the Parliamentary Human Rights Group featuring a Somali human rights defender, who raised our awareness of the risks that such people face every day as they record, report and denounce human rights violations in their own country.

Amnesty International was also present and spoke of the human rights defenders in Colombia where, since 1997, more than 30 human rights defenders have been killed or have "disappeared." Parliamentarians are invited to participate in a solidarity quilt project with Amnesty, blanketing Colombian human rights defenders with Canadian support.

The idea is for parliamentarians to send a tangible and visible message of solidarity to human rights defenders in Colombia. People across the country in Canada are participating in this project, writing messages of solidarity, peace or hope on pieces of fabric that will be collected and sewn together to make quilts. For example, we received a beautifully crafted quilt square

depicting life in the Yukon from a member of the House of Commons. We do not expect that from senators. I do not know if honourable senators can quilt, but a signature and a short message will mean a great deal to Colombians, who will then have senators' names prominently displayed in their country when the solidarity quilts arrive there.

I have some squares with me. Some senators have already signed their names on a square. Senator Taylor says, "We support you." Senator Jaffer says, "We want to work with you."

If honourable senators wish to freely express support for human rights, they can speak to someone in my office or myself and I will make the contact for them. I hope that honourable senators will respond positively.

FREEDOM

Hon. Laurier L. LaPierre: Honourable senators, we are engaged in debating and voting upon important and controversial legislation. In preparing myself for carrying out this responsibility, my friend Monroe Scott has sent me a copy of his book, *The Carving of Canada*, which was published by Penumbra in 1999. Mr. Scott brings to my attention the symbolism that is carved into the "Frieze of History" that adorns the balcony surrounding the foyer of the House of Commons. It is found in the centre of the northeast quadrant and was carved by Eleanor Milne, Canada's former parliamentary sculptor.

Mr. Monroe wrote:

And then Eleanor Milne carved into the central column of stone that stood almost as tall as herself, and out of the stone a figure emerged. At first it appeared to be a woman, for the robed lines were flowing and the face seemed that of a woman, but there was muscular strength in the arms and in the stance. When the form finally emerged it was that of a man. At his feet lay an iron cage, broken, open, with birds flying free. Eleanor Milne had carved Freedom.

Freedom is often imagined as a woman, but Eleanor Milne knew that Freedom must defend itself. She built in muscular strength, and the aggressive will to use it. But the Freedom she created was more than mere liberty. It was a terrible Freedom indeed, for it was the Freedom to Choose.

And it came to pass with the people of Eleanor Milne's Canada, the Canada that grew from visions and stone and toil, would be able to choose their leaders and their governments, to choose their ideals and their ideologies, to choose Right or to choose Wrong and, having made choices, to enjoy the fruits or to suffer the consequences.

It came to pass that Freedom to Choose became the seed, the root, the trunk and the foliage of the many-branched tree that is Canada.

But Eleanor Milne stood frightened at what she had done, for in Exercising the gift of Freedom to Choose the people could choose to lose that freedom, and without it, all would be lost.

WITHDRAWAL OF VETERANS ASSOCIATIONS FROM ADVISORY COMMITTEES TO DEPARTMENT OF VETERANS AFFAIRS

Hon. Michael A. Meighen: Honourable senators, three of the major veterans organizations in this country have recently resigned or withdrawn their participation from two committees that advise the Department of Veterans Affairs: the Royal Canadian Legion, the National Council of Veterans Associations and the Army, Navy and Air Force Veterans in Canada. All have stopped participating in meetings of the Veterans Affairs Canadian Forces Advisory Council and the Gerontological Advisory Council.

While the view of each organization about the viability of these councils may differ, one thing is clear: All of these organizations are fed up with the continuing lack of response by this government to their most serious concerns. Among these concerns are the quality of care provided to veterans in long-term care facilities, the amount of compensation that is provided to prisoners of war and their spouses, and the growing need to provide ongoing assistance to veterans' widows.

Honourable senators, as we all know, our veterans risked their lives so that we may enjoy the peace, freedom and prosperity we enjoy today. How are we repaying them? By not developing national standards of care to ensure that veterans across this country are treated equitably and fairly; by capping the amount of compensation available to former prisoners of war and to their spouses; and by strictly limiting the amount of benefits available to surviving spouses. Surviving spouses are usually women, who often sacrifice a good deal of their later years caring for their ailing husbands.

Honourable senators, our veterans cannot wait forever. We must act and we must act now. I fully understand their frustration when faced with this government's mystifying unwillingness to propose acceptable and comprehensive solutions. I hope honourable senators will join with me in urging the government to immediately attend to the pressing needs of our veterans so that, before it is too late, they may receive the benefits they so richly deserve.

ONE HUNDREDTH ANNIVERSARY OF FIRST WIRELESS TRANSATLANTIC MESSAGE

Hon. Ethel Cochrane: Honourable senators, I rise today in recognition of a major milestone in the history of

communications: the one-hundredth anniversary of the first wireless transatlantic message.

A century ago, Marconi heard the first sounds, the "dit, dit, dit," representing the letter "S" in Morse code. Shortly after midday on December 12, the first signal arrived, having travelled a distance of 3,500 kilometres. To accomplish this feat, Marconi had constructed a transmitter at Cornwall, England, one that was 100 times more powerful than any previous station. He also assembled a receiver at Signal Hill in St. John's, Newfoundland, situated at one of North America's closest points to Europe.

As anyone who has visited Signal Hill can tell you, the winds can get quite high there and in fact, Marconi himself had to contend with the weather. Despite the difficult conditions, however, he managed to use a kite to raise an antenna for a short time, and according to his notes, it was under these conditions that the first transatlantic message was received.

In fact, Marconi continued his relationship with Newfoundland in the years that followed his famous experiment. He returned to the island in 1904, for example, to install a wireless station at Cape Race. Interestingly, it was here that the SOS message from the *Titanic* was received in 1912.

Today, Marconi is commonly credited with the birth of radio. However, I should like to suggest that the story of his success is a valuable one, not only because of his impressive accomplishments, but because it teaches us all the importance of vision, determination and persistence. Like many of us, he, too, experienced bumps and setbacks along the way. He even failed the entrance exam at his hometown university; and, later, he was forced to move across the continent to England in order to secure greater support for his work.

Fortunately for us, Marconi persevered and his scientific success continued well beyond December 1901. In 1909, for instance, he shared the Noble Prize for Physics. However, to most of us today, he is best known for his significant contribution to communications, and we in Newfoundland and Labrador are grateful to have played a role in that outstanding moment in history.

[Translation]

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw to your attention the presence in the gallery of His Excellency the Most Reverend Luigi Ventura, Apostolic Nuncio and Ambassador to Canada of the Holy See. On behalf of all the senators, welcome to the Senate of Canada.

Hon. Senators: Hear, hear!

[English]

ROUTINE PROCEEDINGS

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Peter A. Stollery, Chair of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, December 12, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

TENTH REPORT

Your Committee, to which was referred Bill C-6, An Act to amend the International Boundary Waters Treaty Act and to make related amendments to other Acts, has examined the said Bill in obedience to its Order of Reference dated, Tuesday, November 20, 2001, and now reports the same without amendment.

Respectfully submitted,

PETER A. STOLLERY
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Stollery, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. E. Leo Kolber: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit today, Wednesday, December 12, at 3:30 p.m., even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Motion agreed to.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Lorna Milne: Honourable senators, notwithstanding rule 58(1)(a), I ask for leave to move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit today, Wednesday, December 12, at 3:30 p.m., even though the Senate may then be sitting, for the purpose of receiving evidence for its consideration of Bill C-15A, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

THE SENATE

NOTICE OF MOTION TO STRIKE SPECIAL COMMITTEE
ON CRIME AND VIOLENCE

Hon. Anne C. Cools: Honourable senators, pursuant to rule 56(1) and 57(1)(d), I hereby give notice that I shall move:

That a special committee of the Senate be appointed to examine the questions of crime and violence in Canada, including the processes of criminal charges, plea agreements, sentencing, imprisonment and parole, with special emphasis on the societal and behavioural causes and origins of crime, and on the current developments, pathologies, patterns and trends of crime, and on the consequences of crime and violence for society for Canadians, their families, and for peace and justice itself;

That the Senate committee have the power to consult broadly to examine the relevant research studies, the case law and the literature;

That the special committee shall be composed of five senators, three of whom shall constitute a quorum;

That the special committee have the power to report from time to time to send for persons, papers and records, and to print such papers and evidence as may be ordered by the committee;

That the special committee have the power to sit during the adjournment of the Senate;

That the special committee have the power to retain the services of professional, technical and clerical staff, including legal counsel;

That the special committee have the power to adjourn from place to place within Canada;

That the special committee have the power to authorize television and radio broadcasting of any or all of its proceedings;

And that the special committee shall make its final report no later than two years from the date of the committee's organizational meeting.

PRIVACY RIGHTS CHARTER

NOTICE OF INQUIRY

Hon. Sheila Finestone: Honourable senators, with leave of the Senate I give notice that on Thursday, December 13, I shall call the attention of the Senate to the importance of moving toward a privacy rights charter, particularly during these troubled times.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITIONS

Hon. Lorna Milne: Honourable senators, I have the honour to present 510 signatures from Canadians in the provinces of B.C., Alberta, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia who are researching their ancestry, as well as signatures from 130 people from the United States who are researching their Canadian roots. A total of 640 people are petitioning the following:

• (1400)

Your Petitioners call upon Parliament to take whatever steps necessary to retroactively amend the Confidentiality-Privacy clauses of Statistics Acts since 1906, to allow release to the public after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.

Furthermore, honourable senators, I have the honour to present 121 signatures from Canada's Home Children who petition as follows:

That the Canadian government make available all post 1901 Census returns since they are the only public means available to Canadian Home Children and their descendants, who make up 10 per cent and more of our population, to access the whereabouts of their siblings and relatives from whom they have been separated by this country's tacit acceptance of a policy now recognized by the British Government as being misconceived and the cause of irreparable and irrevocable damage to the child migrants and their descendants.

These signatures now total 14,805 petitioners to the Thirty-seventh Parliament and over 6,000 petitioners to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

Senator Prud'homme: Hear, hear!

QUESTION PERIOD**NATIONAL DEFENCE**

THE BUDGET—ADEQUACY OF ADDITIONAL ALLOCATION

Hon. J. Michael Forrestall: Honourable senators, I wish to ask the Leader of the Government in the Senate a question based upon her response to me yesterday. As a point of clarification, was the Leader of the Government telling this chamber, as I understood her to say, that the Canadian Forces will receive \$300 million in new monies this year and each year thereafter for capital expenditure? If that is the case, will the minister commit the government to at least that level of funding each year hereafter until 2006 and put it in writing, or is the \$300 million for capital expenditure a one-shot deal?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, a decision has been made to spend \$300 million in the fiscal year 2002-2003. No further decisions have been made at this time as far as future years are concerned.

Senator Forrestall: The honourable senator will admit then that is different from what was told to me yesterday. However, that is fine. I am glad to have it straightened out.

CUTBACKS TO BUDGET—POSSIBILITY OF NEW WHITE PAPER

Hon. J. Michael Forrestall: The minister, as well, claimed that the Canadian Forces received \$5.1 billion in additional monies between 1999 and 2001. If only that were the case, honourable senators, perhaps I could have a Sea King to fly back and forth to Halifax that was safe. Perhaps the minister has taken a real interest in the marijuana debate.

Will the minister not admit that this government has cut some \$10 billion from the defence budget cumulatively since 1994 when they took power and decided through deliberate, benign neglect to let Canadian capabilities run down to the present level?

Senator Carstairs: Honourable senators, the answer to the Honourable Senator Forrestall's question is quite simple. In the budget year 1999, the federal government invested an additional \$550 million. In budget year 2000, the federal government invested an additional \$3,350 million. In the budget for 2001, the amount was \$1.2 billion. With this year's budget amount of \$1.2 billion, the total amount invested will be \$5.1 billion.

Senator Forrestall: Honourable senators, the minister did not answer the question. How much did the government take out before they put in \$5.1 billion? That was the real question.

This government has decided to ignore the warning of the Auditor General that \$1.3 billion was required this year alone, and in each successive year for five years to prevent the demise of the Canadian Forces combat capabilities. When will this government issue its next white paper so that Canada, and particularly members of the Canadian Armed Forces, will have some idea of where they are going from day to day and month to month, and where they can expect to be one year or five years down the road? When will we get a new white paper?

Senator Carstairs: The honourable senator is quite correct when he argues that in the years when we were dealing with enormous deficits and a debt that was becoming an increasing burden on all Canadians, there were cuts to every single department of government with the exception of the Department of Indian and Northern Affairs because our Aboriginal people were in such desperate need. In 1999, when we began to see a turnaround in terms of surpluses for this government, a commitment was made to the military to give increasing amounts of money. Between 1999 and this budget, additional sums of money in the amount of \$5.1 billion have been added to the defence budget to better equip and to better pay our well-deserved and good serving members of the Canadian Armed Forces.

As to the honourable senator's question on when there will be another white paper, no decision has been made on that matter.

Senator Forrestall: Is one in the process of being written? We heard evidence from the principal author of military white papers that he was giving consideration to the outlying structure of a new white paper. Is that, in fact, an ongoing process in which the Minister of National Defence, the Prime Minister and other members of the Special Cabinet Committee on Security would be involved? In other words, is the government working on one?

Senator Carstairs: Honourable senators, to the best of my knowledge, no white paper is in the process of being produced.

TRANSPORT

AIR TRAVELLERS SECURITY CHARGE

Hon. Donald H. Oliver: Honourable senators, my question deals with the so-called air travel tax. I am concerned that it is a burden on seniors and people on fixed incomes.

The honourable Leader of the Government in the Senate will recall that yesterday I asked her some questions in relation to this air travel tax. The Leader of the Government said that the government considers it "appropriate that the people who are using the airplanes should in fact pay the fee."

However, Pat Kennedy, Chairperson of the Air Transport Association of Canada, begs to differ. According to

Mr. Kennedy it is not an airline issue. It is a national security issue, and the government and not the consumer should pay for the tax. This is a perfectly valid point made by the Air Transport Association.

One thing that we have learned from the nature of the terrorist attacks of September 11 is that airline security is a general security issue that should have, and does have, implications for the entire economy and entire society. By imposing this tax, why has the government chosen to treat air security differently from national policing and border security, both of which are funded by general revenues? Where is the fairness to this measure?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is a simple explanation. If people did not fly on airplanes, then we would not need security at airports. That is the reality. Since people choose to fly, and many choose so each and every week of their lives, it is their security that is in jeopardy if there are terrorist attacks. They are the ones, therefore, in the mind and on the part of this government should be bearing the costs.

Senator Oliver: The more one examines this tax, honourable senators, the more unfair it appears. The comparable tax for a round trip flight in the United States is \$5. In Canada, under this new air travel tax, it is \$24, plus GST. That is a huge discrepancy.

Could the Leader of the Government in the Senate please explain why air travellers in Canada will be charged 3.5 times what the U.S. government is charging its travellers?

Senator Carstairs: Honourable senators, first and foremost, we must deal with the volume of air traffic that goes from place to place in the United States and from place to place in Canada.

● (1410)

That presents a problem from our perspective. We simply do not have the equivalent volume. However, I have heard honourable senators argue strenuously on the other side, and correctly so, that we need to have the same level of security. That is why the burden of cost in Canada will be substantially higher than the burden of cost in the United States.

Honourable senators, let us be clear that the \$5 fee established by the Americans is subject to an increase should they recognize that it cannot bear the costs of providing the maximum amount of required security.

Senator Oliver: Does that mean that the \$24 tax may increase if it is determined that the system cannot bear those costs in Canada?

Senator Carstairs: Honourable senators, the Honourable Minister Collenette was clear yesterday when he indicated that he is hopeful that it might decrease, not increase.

FOREIGN AFFAIRS

THE BUDGET—ALLOCATION TO AFRICA FUND

Hon. Douglas Roche: Honourable senators, my question is for the Leader of the Government in the Senate.

Monday's budget included a \$500-million trust fund for African development that, as the Prime Minister has stated, will be a Canadian priority at the next G8 summit to be held in 2002 in Alberta. So far, so good, but here comes the catch. The money will only be put into the fund if there is a surplus in the government accounts.

What kind of commitment to Africa is this? Can our country, which professes to care about the tragedies in Africa brought about by a pandemic of AIDS and other impediments to sustainable development, not make a firm commitment that is not dependent on it having excess funds?

Hon. Sharon Carstairs (Leader of the Government): As honourable senators well know, since 1993, Canada's Minister of Finance Minister has been extraordinarily cautious in his budgetary projections. The surpluses forecast in the budget each year have been exceeded by significantly higher numbers. The decision to target the trust fund to the surplus is a safe one. I think we will find that at the end of each fiscal year there will be monies to provide to the Africa Fund.

THE BUDGET—ALLOCATION TO DEVELOPING COUNTRIES

Hon. Douglas Roche: It may be safe, honourable senators, but it is not fair. A wish is not a commitment.

Honourable senators, the government has committed certain funds to overseas development in the budget. The aid commitments that are firm were first promised in the Speech from the Throne given in this chamber last January. The Throne Speech stated that there would be an increase in official development assistance. Now, the level is at 0.24 per cent of the gross national product, which is far below the official international target first proposed by Prime Minister Pearson of 0.7 per cent of GNP. With the need for aid increases coming, the aid increase will only go from 0.24 per cent to 0.26 per cent.

I ask the government to show some leadership in the international community and meet the threats to human security in developing countries with a substantive investment in development assistance.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, there have been considerable increases in this budget. The Department of International Cooperation was, by all measures, one of the big winners in the announcement of budgetary expenditures for the year 2002-03. No, it is not as much as my honourable friend would like, nor is it as much as I would like, but it is moving in the right direction at a difficult

time. Clearly, these are difficult economic circumstances, coupled with the tragic events of September 11.

The government had to balance its decision. Instead of turning its back on its commitment, at least in the short term it moved forward on its commitment. Perhaps, as all honourable senators would agree, the commitment is not as large as we would both prefer.

THE BUDGET—ALLOCATION TO AFRICA FUND

Hon. Lois M. Wilson: Honourable senators, is the \$500 million available only for one year? If the answer is yes, what is the policy of the government on sustainable development?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the fund that has been targeted for Africa, to which the honourable senator is referring, is the \$500-million Africa Fund, which has been put in the budget for the year 2002-03. It will be clearly discussed in some detail at the G8 meeting to be held next year in Alberta. I would presume that further decisions will be made.

Senator Wilson: Is it a one-time grant?

Senator Carstairs: It is a budgetary line for this year. We will not make budgetary lines for future years until we have the next budget.

TRANSPORT

AIR TRAVELLERS SECURITY CHARGE

Hon. Leonard J. Gustafson: Honourable senators, I have a supplementary question in respect of the security charge for air travellers.

Small airlines and smaller centres will be financially hit severely because of this airport tax, especially on the short flights such as those from Regina to Saskatoon or from Kelowna to Vancouver.

Representatives from WestJet said today that the tax could hurt their business. For example, if a family of four were fly, the extra cost would be \$96. These surcharges are a serious mistake. In addition, I believe that business will be stifled by this tax. The government will probably end up losing more money than it gains from from this tax.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I must say that I disagree with the Honourable Senator Gustafson. There are many great people in Canada who since September 11 will not fly. I met one just last evening, as a matter of fact. She is the wife of a member of Parliament. She simply will not board an airplane. She would rather drive 7.5 hours to return to her husband's constituency than fly in an aircraft.

Honourable senators, we must assure Canadians that it is safe to fly. One way of doing that is to ensure that adequate safety precautions and security measures are in place to relieve that burden of fear. I believe that by enhancing our security, the concerns of some will be relieved, although some will never lose their fear.

It is a policy decision of the Government of Canada that the cost will be paid for by those who are using the airlines.

Senator Gustafson: Honourable senators, many people will choose to drive the short distances rather than fly. This will affect the airlines that are already experiencing difficulty competing with Air Canada, because the government protects them indirectly. This proposal will probably further protect Air Canada from smaller airlines that are trying to compete.

Does the honourable senator not believe that this announcement will stifle business to some extent? It is bound to have that effect.

Senator Carstairs: Honourable senators, Senator Gustafson and I have a disagreement. I believe that this policy will encourage people to fly; it will not discourage people from flying if there are adequate security precautions in place.

AIR TRAVELLERS SECURITY CHARGE— CRITERIA FOR IMPOSITION OF TAX

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the assumption is that there is a security threat. Does the government have a measure of that threat? Does the measure increase and decrease? Is there a benchmark against which this is measured?

I fly out of regional airports, and my hypothesis is that there is no credible threat to fly aboard aircraft leaving Fredericton, New Brunswick, for example. Are there objective criteria, or are we accepting this security threat on faith?

● (1420)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the most objective criterion is September 11.

Senator Kinsella: That does not prove anything.

THE SENATE

PASSAGE OF BILL S-12

Hon. Laurier L. LaPierre: Honourable senators, my question is for the Leader of the Government in the Senate, and I am wondering if she would be so kind as to help me out.

I am the chairman of the Heritage Fairs. Two-hundred-fifty thousand young people in grades four to eight participate in this project every year by creating exhibits. About 10 per cent of

them do it on genealogy. They trace back their ancestry. They are humbled considerably now by the stupidity of the fact that they cannot have access to the census reports past 1901 on the grounds that Sir Wilfred Laurier supposedly made a promise that that information would never be divulged. Sir Wilfred Laurier never did make that promise.

Consequently, minister, will you help the children of this country who want to do their projects by proceeding with Bill S-12, now before the Senate, and get it done as quickly as possible so that the children of this country can know where they come from?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I assume that the honourable senator is referring to Honourable Senator Milne's bill. As you know, it is before the Standing Senate Committee on Social Affairs, Science and Technology. I understand that it will be reported soon. At that point, the best I can give the honourable senator is my assurance that it will come to a fulsome debate in this chamber.

[Translation]

FOREIGN AFFAIRS

RECRUITMENT OF OFFICIALS FROM WITHIN PUBLIC SERVICE

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate. I recently read a newspaper report that indicated that, for the past 50 years, the senior staff of Foreign Affairs, the professional staff, have been hired through a big Canada-wide competition open to graduates of all faculties. As a result, a certain number of people get into the Canadian diplomatic corps.

This process goes back to the days of Dupuis, Désy, Pearson and all the other mandarins at Foreign Affairs, and it has had good results. Our country's representatives abroad are known for their excellence.

This year, for the first time, the competition for senior management at the Department will be open to senior management already in the federal public service. Apparently, the salaries are not sufficiently attractive to recruit young executives into Foreign Affairs. Why suddenly change the tradition that has served well in the past? It means a major change in the way our diplomats are being recruited. Can the minister give us any information on this?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I understand that the competitions that have occurred in the past will still continue. We will try to use the normal procedures for recruitment, but additional people may be required, particularly at the level below the foreign service officer class, which may well be capable of being filled by those currently in the employ of the public service.

[Senator Carstairs]

[Translation]

DELAYED ANSWERS TO ORAL QUESTIONS

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in this House a response to a question raised in the Senate on November 28, 2001, by Senator Forrestall, regarding Sea King Helicopters and a question raised in the Senate on November 29, 2001, by Senator Kinsella regarding the Multiculturalism Program Action Plan.

NATIONAL DEFENCE

SEA KING HELICOPTERS—PROGRAMS FOR EXTENSION OF LIFE OF AIRCRAFT

(Response to question raised by the Hon. J. Michael Forrestall on November 28, 2001)

The Government of Canada has requested a quote from the IMP Group Limited (formerly Industrial Marine Products) to conduct a study of the supportability of the Sea Kings past 2005. The study would be done within an existing contract the Government has with the IMP Group to provide technical investigations and engineering support.

This is part of the Government's ongoing work to ensure the Sea Kings remain safe to fly until the new equipment is acquired and phased into service.

It is still the Government's desire to take delivery of the first new maritime helicopter by 2005.

SECRETARY OF STATE FOR MULTICULTURALISM

ANTI-TERRORISM BILL—GOVERNMENT PLAN IN RESPONSE TO MINORITY GROUPS

(Response to question raised by Hon. Noël A. Kinsella on November 29, 2001)

Since September 11th, the Secretary of State for Multiculturalism has met with numerous Canadians at regional meetings across the country that included community members, local police, educators and municipalities. The Government is taking action to address issues that have been raised during these discussions.

This Government recognizes that an important part of achieving security for all is to work with partners and communities to foster respect, strengthen communities, enhance inter-cultural and inter-faith understanding, and to strengthen the bonds and values that unite us.

The core elements of the Multiculturalism Program Action Plan are:

1. Horizontal Partnerships within the Federal Government

Partner with relevant federal departments to develop inter-cultural training and tools to strengthen community relationships and trust.

2. Education

Develop, with appropriate partners, broad based educational tools, as well as public awareness and Internet based information tools.

3. Partnering with Community Organizations

Work with community and voluntary organisations to build capacity, to strengthen community cohesion and enhance inter-cultural and interfaith understanding.

4. Partnering with Local Institutions and Other Levels of Government

Partner with local police and municipalities to assist with the development of strategies and programs to enhance outreach and strengthen social cohesion.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, we would like to begin with Item No. 4, second reading of Bill C-46, and then revert back to the Orders of the Day as proposed.

[English]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, so that all honourable senators have a general understanding of how the business of the house might proceed this afternoon, can my colleague opposite confirm the following: He will first call Bill C-46. It is our expectation that, after that item has been debated at second reading, the house may dissolve into Committee of the Whole. At around 3:15, our Standing Senate Committee on Transport and Communications has the minister appearing. I know many honourable senators will want to attend that meeting. If we are in Committee of the Whole, we are expecting to have a minister present as well. After that, we will continue through the Order Paper.

I am not sure whether there is another committee.

Senator Carstairs: There are two others.

Senator Lynch-Staunton: Will we have a quorum?

Senator Kinsella: I am glad the government whip is here today to ensure a quorum in this place. I understand that the Transport, Banking, and Legal Committees are sitting and perhaps others.

Senator Carstairs: No, that is it.

Senator Robichaud: Honourable senators, I hesitate to assume what will happen here because sometimes I am surprised. However, if things go as we think they will go, yes, there will be debate on Bill C-46. If second reading is completed before 3:30, which is the time when the minister will be ready to appear at Committee of the Whole, then we will be proceeding to other business on the Order Paper. Yes, committees are sitting at the same time as we are sitting. The whip assures me that we will have a quorum so that business can be conducted here and in the committees.

Hon. Douglas Roche: Honourable senator, is the deputy leader confirming that we will, in fact, be debating Bill C-36 today?

Senator Robichaud: Honourable senators, first, I am calling Bill C-46 which will be followed by Bill C-36. The rest of the Order Paper will then be called as it is presented to us.

CRIMINAL CODE

BILL TO AMEND—SECOND READING

Hon. Sharon Carstairs moved the second reading of Bill C-46, to amend the Criminal Code (alcohol ignition interlock device programs).

She said: Honourable senators, I shall speak only briefly, because there is an expert among us on the issue of impaired driving, that being Senator LeBreton. Her comments will follow my brief remarks.

Impaired driving is a complex social, health and safety problem. There is no single solution and there must be an array of countermeasures to address the problem.

At the present time, under the Criminal Code, a judge must prohibit a first-time impaired driver from operating a vehicle for at least 12 months. However, the judge can allow the first-time impaired driver to drive after three months if the offender uses an ignition interlock device.

An ignition interlock device operates in the following way: In order to start the car, a driver is required to breathe into the device; if the alcohol level that is recorded is beyond the legal limit, the automobile will not start.

Bill C-46 will allow the provinces to request individuals to place these devices in their automobiles. If they choose not to do so, then the full impact of the present Criminal Code will come into effect; if they do accept the use of this device, then the reduced penalty can be provided. So far, where these devices have been used, there has been a positive impact on reducing the

number of drivers who have been convicted of drunk driving from reoffending.

With those very brief remarks, I shall turn it over to our resident expert, the Honourable Senator LeBreton.

Hon. Marjory LeBreton: Honourable senators, I should like to begin by thanking Justice Minister McLellan and the government for their continuing support of initiatives to end the serious crime of impaired driving.

Needless to say, I support Bill C-46. However, I have one small concern with respect to clause 1.1, which contains the wording "the court may authorize the offender." I would prefer the wording "the court will authorize the offender." The alcohol ignition interlock is the best device available to stop repeat offenders from drinking and driving. Hence, I would not like to see the word "may" being used in order to give judicial discretion in this important area of technology to combat impaired driving. Nevertheless, this can be addressed, if it is needed, at a later date.

The Honourable Senator Carstairs did a good job of describing what the alcohol ignition interlock device does. As a matter of interest, the believe the courts can also decide on the level to be set. It does not have to be set at the legal limit. Currently in the world, 38 states in the United States as well as Alberta and Quebec have interlock programs. There are 40,000 interlock devices in use around the world, including 4,500 in Canada.

Honourable senators, I am personally encouraged, as I know my colleagues at MADD Canada are, that the minister has favourably reacted to MADD's recent launch of "Taking Back our Roads," which outlines the next important step in the fight to eliminate impaired driving, beginning with lowering the Criminal Code blood alcohol level from 0.08 to 0.05.

Honourable senators, federal laws passed in 1999 and 2000 provided for stronger impaired driving penalties that should act as a greater deterrent for law-abiding Canadians, most of whom recognize that drinking and driving is wrong. However, we must also contend with repeat offenders and with persons who often disregard or have no respect for the laws or for the lives of others on our roads. This is where ignition interlocks are of great value.

Ignition interlocks go to the core of stopping the crime of impaired driving. The device is more than an increased penalty levied after the fact; it is a control measure that will alter behaviour before the crime is committed again. Ignition interlocks ensure that those people who are unable or unwilling to make responsible decisions about driving after they have consumed alcohol will not be able to start their vehicles. In this way, ignition interlocks are very important for everyone's public safety.

This device ensures that people who are drinking cannot start their vehicles. By making it a condition of an impaired driver's sentence, ignition interlocks will help to reduce the number of repeat offenders. These devices work. They are effective because they alter the behaviour of persons most likely to drink and drive. They help to keep repeat offenders, often the so-called hard-core drunk driver, honest by keeping him or her from getting behind the wheel.

Ignition interlocks should not be seen as a substitute for other penalties and sanctions but, rather, as an added measure to ensure that a convicted impaired driver does not repeat the crime. The installation of an alcohol interlock device should be viewed as part of the transition between full licence suspension and full driving privileges.

Costs should not be a factor. The installation and ongoing maintenance of the devices can be established as a user-pay program operating through the driver's licensing agency. An effective program would cost an individual no more than \$3 a day — you could think of it as less than a case of beer a week.

This new measure allows for judges to require the use of an ignition interlock as a condition of probation. It sends a signal to the provinces to use this effective technology. There are already provinces that are far ahead in this regard. Alberta and Quebec have a program. Saskatchewan is in the midst of running a pilot program. Ontario has passed legislation but it is yet to be implemented. When it is, it will be the toughest law of all because it will apply automatically to first offenders. Newfoundland and Labrador and Nova Scotia are now looking at introducing ignition interlock programs as a mandatory condition of licence reinstatement for all repeat impaired driving offenders and for first offenders with blood alcohol levels of 0.016 — in other words, a drink or two.

MADD Canada launched its national campaign for ignition interlocks in November 1999 when it was seeking the stiffening of the sentences in the Criminal Code. Since then, it has been working closely with the provinces to have new legislation passed in each jurisdiction.

Recently, in a meeting with the federal Justice Minister, MADD Canada asked that the federal government consider inserting the mandatory use of ignition interlocks into the Criminal Code. This is very important because I have found through my work with MADD that there is a great lack of uniformity across the country. Putting this mandatory use into the Criminal Code would mean that the law would be consistent from coast to coast. It is MADD Canada's hope that this legislation will send a strong message to the provinces resulting in each jurisdiction implementing an ignition interlock program.

Honourable senators, one further point before I conclude my remarks. When MADD Canada announced that it would push for the lowering of the blood alcohol level from 0.08 to 0.05, it was

because our current blood alcohol level is not deterring people from drinking and driving. There are an estimated 12.5 million impaired driving trips annually on the roads in Canada, with tens of thousands of impaired drivers on the road each night. Just think of that when you are driving home at night and start anticipating who is coming at you.

The overwhelming international trend all over the modern world has been to reduce blood alcohol level limits. Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Norway, the Netherlands and many other countries have 0.05 limits, while Japan, Hungary and Sweden have even lower limits. Virtually every jurisdiction that has established a blood alcohol limit of 0.05 or lower has experienced immediate traffic safety benefits through reduced crashes, injuries and fatalities. It is significant to note that Sweden and Australia reported that the greatest effects of the lower blood alcohol limit were on people who continued to drive with high blood alcohol levels, proving without a doubt that it even deters the high-risk offender, or the so-called hard-core group. As honourable senators probably know, many people like to say that the problem is only with "a few hard-core drinkers." That is simply not supported by the facts. Statistics also show that while countries such as Germany, Sweden and France have a much higher consumption level of alcohol, they have fewer accidents caused by drunk drivers.

● (1440)

When prompted with a specific proposal to lower the federal criminal blood alcohol level from 0.08 to 0.05, two in three Canadians, or 66 per cent, said they either strongly supported or supported the proposal. In today's *Ottawa Sun*, I was happy to see that a survey in this region resulted in similar support.

When the 0.05 goal was announced, I and others expected some opposition from the brewers, from liquor producers and from others in the hospitality industry. I was shocked, to say the least, that the Canada Safety Council would be one of our opponents on this issue. They wrongly suggested that this was a step toward prohibition and that MADD was acting on emotion. We certainly are not advocating prohibition. I enjoy a good glass of wine like everyone else. I just do not get behind the wheel of my car afterward.

As I pointed out a few moments ago, our request for action is based on solid research and on the experience of other modern societies in the world. There is no basis for the arguments of Mr. Therien on behalf of the Canada Safety Council. I think it is fair to ask: What is the motivation for his and their opposition? I would very much like to have the names of the board of directors of the Canada Safety Council because I would like to talk to them personally, on an individual basis, not on an emotional level but about the facts based on research. It is important for their board to address this issue seriously, otherwise, in the end, the name "Canada Safety Council" will be the ultimate oxymoron.

Just last Friday, honourable senators, I had the honour of being at a meeting of the Canadian Medical Association where I presented their president, Dr. Haddad, with a special award on behalf of MADD Canada. The Canadian Medical Association is partnered with MADD in the issue of blood alcohol levels.

As my grandchildren would say about the alcohol ignition interlock device, it is a no-brainer. It is simply something that is meant to protect each and every one of us and our families.

Honourable senators, as we enter this holiday season — and I know there are some Christmas parties going on tonight — I would urge everyone in this place to make the decision, when your judgment is sound, to make other arrangements to get home safely. Please, please do not get behind the wheel of a car when you have been drinking. If each of us is honest with ourselves, we know of some people in this very chamber who, perhaps, do not follow that rule.

Honourable senators, I strongly urge that we pass Bill C-46 in time for the holiday season.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE OF THE WHOLE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Carstairs, bill referred to Committee of the Whole later this day.

ANTI-TERRORISM BILL

THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, let me make it clear at the beginning that my opposition to Bill C-36 is not to be interpreted as an argument against anti-terrorism but, rather, as one for the respect of Canada's Constitution. To paraphrase a great American statesman, John Adams, "Ours is a government of laws, not of people." In many respects, Bill C-36 violates this basic premise.

[Senator LeBreton]

Exceptional circumstances certainly demand exceptional responses. This truism is used by the government to introduce legislation which clearly includes provisions completely in opposition to fundamental rights and values which make this country the envy of so many. In reply it is argued that the safeguard of these rights and values may depend on their suspension, in whole or in part, as those challenging them so violently are also taking advantage of them to the detriment of society as a whole. My answer to that is found in a quote from the brief submitted by the Canadian Bar Association to the Special Senate Committee on Bill C-36:

The government currently has many legal tools to combat a terrorist threat. Even without considering investigative authority under the Canadian Security and Intelligence Service Act or the National Defence Act, existing provisions of the Criminal Code provide an impressive arsenal to combat terrorist organizations.

The list is lengthy and includes, as Professor Kent Roach pointed out to the committee: murder, hijacking, endangering or having offensive weapons on aircraft, administering poison or noxious substances, offences in relation to explosives, offences in relation to nuclear materials, treason and sedition, sabotage, intimidation of legislatures or people, uttering threats, unlawfully causing bodily harm or death, kidnapping and hostage taking, conveying false messages to alarm, and various offences relating to forged passports, citizenship and nationalization certificates and other false documents.

In addition, there are offences relating to threatening international protected persons or their residences, impersonation and mischief to property. The criminal organization provisions in the code may also apply.

Honourable senators, this list is far from exhaustive. To those who wish to pursue the topic of the tools already available to the government, I refer them to pages 10 and 11 of the CBA brief. In addition, as the bar has pointed out, the current Immigration Act provides ample provisions to prevent terrorists from coming to Canada or to detain and remove those who are here.

If this were not enough, the government already has at its disposal the Emergencies Act which was passed in 1985 to replace the War Measures Act. There are many who will argue that the Emergencies Act gives powers to the government not dissimilar to those in its late and unlamented predecessor.

What differentiates it from the War Measures Act, however, is that its replacement includes a mechanism for near immediate parliamentary review of all orders and regulations made under it, as well as a mechanism for the revocation of any order or regulation. As many witnesses have pointed out, the tools are there, yet the government persists in having us believe that Bill C-36 is essential; otherwise success in its anti-terrorist efforts will be limited.

Let me list, as did the Canadian Bar Association, some of the additional authority Parliament is asked to approve. They include preventive arrest on mere suspicion; judicial participation in the investigative phase; easily issued certificates to block access to information; the addition of the grounds on which and the people who might go to court to block a court's access to information; vastly expanded use of summaries of evidence; the use of hearsay evidence, with a directive to the judge to draw no undue inference from the fact that the Crown does not bring to it firsthand evidence; cumulative sentencing imposed on judges for certain crimes; making life sentences available on a variety of Criminal Code violations which currently do not carry life sentences; and investigative hearings with the loss of the right to remain silent.

• (1450)

Honourable senators, I was startled yesterday to hear the Leader of the Government say to us, in her comments on this bill, that we do not have a right to silence in Canada. I want to dispel that wrong impression by reminding honourable senators that in section 7 of the Charter the right to silence is a principle of fundamental justice. This has been confirmed in a number of Supreme Court cases dating back to 1990. If that needs support, let me quote from Professor Hogg's book, *Constitutional Law of Canada*, 4th Edition, page 1111, in *Hébert*, the Supreme Court, in its opinion, stated:

...the right to silence was said to be a "basic tenet of the legal system..."

If that authority is not conclusive enough, let me quote from another authority who wrote a very fine treatise, of which he sent me a copy and now I realize why. It is entitled: *Les droits et libertés au Canada*, by Gérald Beaudoin, in collaboration with his fine assistant, Pierre Thibault. It reads as follows:

[Translation]

The *Chandlers* case deals in part with the right to remain silent. Justice Cory, on behalf of the court on this specific issue, reiterates the principle whereby the right to remain silent is now protected under the Canadian Charter of Rights and Freedoms.

[English]

To assume that the right of silence is not available to Canadians is to give, to say the least, a very erroneous interpretation of one of the key sections of the Charter.

Many draconian powers in Bill C-36 are loosely worded and subject to contradictory interpretations, which can only lead to an implementation not intended by Parliament. Even the Liberal majority on the special committee, in its observations in the report tabled on Monday, suggested this possibility in so many words by calling for proper training and for adequate resources for the authorities responsible for implementing Bill C-36.

Surely, if the resources and abilities are not yet in place, how can the government justify enacting legislation without them?

The vast majority of witnesses agreed that continuing parliamentary oversight and an expiry date for the more contentious parts of the bill will go a long way in limiting the excesses that many of its clauses could allow. Yes, there is urgency for this sort of legislation. I agree. However, there is more urgency in getting it right, and this the government will not allow.

Honourable senators, I doubt if there is one single person who has read the bill to the extent that he or she can unequivocally answer questions on the significance of all of its clauses. I include in that category its authors who worked under tremendous pressure imposed by an unrealistic deadline. I commend them all for their efforts, as well as the senior officials of the Department of Justice for their contribution to the hearings. They all exhibited professionalism and commitment, which are a credit to their departments in particular and to the public service in general.

Yet my question remains valid: Where is that person who can give a direct, unqualified reply to all of our troubling questions on Bill C-36? Who can explain the 10 United Nations conventions and refute categorically that not one infringes on the Charter? Who can assure us that the amendments to 22 existing acts are consistent not only with the acts themselves but also with each other?

Pre-study and study of the bill itself have only permitted a cursory review, and the more one examines Bill C-36, I dare say, there is not much more than a superficial understanding of its ramifications. Too many times the Minister of Justice tried to explain away any concern about the possibility of abuse by replying that she and her colleagues were very conscious of this apprehension and will make every effort to see that it be proven unfounded.

I do not doubt her good intentions, but, if Bill C-36 is to become a permanent statute, what assurances do we have that her successors will be as conscientious? One need only recall the War Measures Act to justify the concern about abuse. Passed hastily, with little debate in both Houses in 1914, that act was intended for the duration of World War I only. Instead, it lasted nearly 75 years, and was applied twice again; once during World War II and in 1970 during the October Crisis. At that time nearly 500 people were arrested under a regulation, which stated that a person suspected of membership in an unlawful association could be detained in custody for up to 21 days without being charged.

What would have been the reaction of the authors of the War Measures Act had they been asked about the possibility of the act allowing mass arrests in peacetime of hundreds of Canadians merely on suspicion of belonging to an unlawful association? No doubt, one not dissimilar to that of the current Minister of Justice, and with the same deeply felt conviction.

Bill C-36 lends itself to misuse and abuse, not at all intended, I agree, by its sponsor. Its key clauses, however, are more general than specific, thus allowing interpretations not even envisioned and certainly not intended by its authors. The argument that two of its most contentious clauses, preventive arrests and investigative hearings, are being made subject to a sunset clause is invalid because a true sunset clause implies a set date at which time total expiry takes place, and only by the introduction and passage of new legislation can the expiry be lifted. The government, in the case of the two clauses, has not subjected them to a definite expiry date but to their renewal on a simple resolution of both Houses. This is a hybrid form of sunset clause that is simply unacceptable.

Therefore, honourable senators, one effective way to impose some order and discipline in the implementation of Bill C-36 is to subject it to a sunset clause. I will end these remarks by proposing such an amendment — an amendment, by the way, which is the natural outcome of a key recommendation in the pre-study report that was tabled here. The amendment was supported in this chamber by the chairman of the committee, by the deputy chairman of the committee and, following his remarks, on a motion of Senator Beaudoin. The pre-study report, with all its recommendations, was given unanimous support by this chamber on November 22. That can only be considered a commitment of support by the Senate of Canada to the recommendations and, to follow through with that, amendments are essential.

Therefore, it is with pleasure that I will propose the first amendment, which is in line with a key recommendation. It will exclude the United Nations conventions as they allow a signatory, upon giving adequate notice, the right to withdraw. It also excludes three clauses dealing with hate propaganda, desecration of religious property and the dissemination of hate over the Internet as these obviously are essential, whatever prompts their violations.

MOTION IN AMENDMENT

Hon. John Lynch-Staunton (Leader of the Opposition): I move, seconded by the Honourable Senator Forrestall:

That Bill C-36 be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

"Expiration

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council;

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human*

Rights Act, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfil its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2), and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4."

• (1500)

The Hon. the Speaker: Honourable senators, it is moved by Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall:

That Bill C-36 be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

"Expiration

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4).1 of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4."

Is it your pleasure, honourable senators, to adopt the motion in amendment?

Hon. Marcel Prud'homme: Honourable senators, the amendment is lengthy. According to the rules, the debate should now be on Bill C-36, as amended. Some of us have not seen the amendment. It sounds like a very complicated amendment, although it may become very simple once we have seen it. Nevertheless, under the rules of procedure, at the moment the debate should be on the amendment of Senator Lynch-Staunton. Although we have heard His Honour read the amendment, we must determine how it affects Bill C-36.

I do not wish to delay unduly, but in the interests of order perhaps His Honour would move to another item until we get a copy of this amendment. I am in His Honour's hands, but we must proceed in an orderly fashion in order to know the exact meaning of what Senator Lynch-Staunton has just proposed.

If someone is ready to speak to the amendment, that may help to clarify what the amendment is about.

Hon. James F. Kelleher: Honourable senators, I am pleased to speak to this proposed amendment.

It was a proud day for me as a senator when the first report of the special committee was unanimously adopted by the Senate. For all of our justifiable concerns about the relevance of this place, I felt that we as a Senate, examining one of the most important and intrusive pieces of legislation in our history, had produced a report of which we can all be proud. The members of the committee worked long and hard to come up with our recommendations, and it was especially gratifying when all of our recommendations were accepted by this chamber.

My elation was short lived, however. On Monday of this week, we were back to the same old ways. The majority used its numbers to defeat all amendments put forward, and the result is a bill that does not approach the one the Senate had hoped for. I suppose I should have known better than to think that the second report would equal the integrity of the first.

The government will tell you that we got what we asked for in our first report, but I beg to differ. Apparently, we got a sunset clause. We asked for a clause that would kill the legislation and force its reintroduction. Reintroduction, as you all know, means that we would have an opportunity to examine any new bill in full — to hold hearings and call witnesses. Instead of the bill being reintroduced, however, there will be a vote on a motion to extend two clauses — no hearings, no witnesses, nothing — and I think we know what will happen to that motion.

The Liberals will tell you that a sunset clause is not necessary because we have a three-year review. Well, we had a three-year review in the first draft of the bill, and the Senate still endorsed a full sunset clause. What is different now?

We are also told that the minister will keep us informed on an annual basis. Each year, we will get a numerical list of how many times the provisions in this bill have been exercised. We will not know why they were used, where they were used, when they were used or even who used them. I am sure that a page or two will be sufficient to provide us with the limited information proposed.

This is a time when we need to be reassuring Canadians, especially visible minority Canadians, that the power in this bill will not be abused. Witness after witness appeared before our committee and recommended a sunset clause. Representatives of minority groups were particularly concerned. I do not believe that a motion in three years' time, or a page of numbers each year, will give them the comfort they need.

Honourable senators, there is much more I could say about this bill, but I will restrict myself to these remarks. We as a Senate should remain committed to that which we endorsed in the first instance — a full sunset clause over the majority of this bill.

Hon. Jeremiah S. Grafstein: Honourable senators, I have a question for Senator Kelleher. His speech and that of Senator Lynch-Staunton gives us on this side cause for deep reflection. I

also listened very carefully to the speech of the Leader of the Government in the Senate. On careful reflection, I think it is appropriate for us to consider the view suggested by the Leader of the Government in the Senate. Let us assume for the moment that at the end of a year or two we discover, based on reports received from the Attorney General, from the press, from CSIS, the RCMP or any other public authority that might have reference to this bill, that there have been systematic violations of human rights or systematic violations of the Charter. What is to prevent any honourable senator from proposing amendments to curtail the extraordinary powers granted in this bill if we are satisfied, on clear and public evidence, that the bill has been abused?

• (1510)

Senator Kelleher: In response, I suppose that is possible. Given the fact that the government passed this bill, I think that it is highly unlikely that word would come down on high to permit such a reintroduction.

Senator Grafstein: Again, both of the honourable senators have made reference to the emergency legislation.

Senator Kelleher: I did not.

Senator Grafstein: I believe Senator Lynch-Staunton did. That gave me pause for consideration as well, and I am thinking about it carefully. If in fact there were emergency legislation in place, we would be prevented because of the context of the emergency legislation, notwithstanding outrageous or egregious breaches of the Charter or Human Rights, from bringing in renovating amendments. This legislation, since there is no provision for emergency legislation that acts as a barrier to amendments because the emergency may still exist, does not prevent us six months from today or a year from today from introducing amendments.

Speaking for myself, I can tell honourable senators that if we on this side discover, on clear and present evidence, that there are systematic violations, there will be amendments coming from this side.

Hon. Lowell Murray: How will the honourable senator discover that?

Senator Kelleher: As I understand the rules, and I do not profess to be any kind of an expert on the rules, it is my understanding that nothing can be brought back with respect to this bill until the next Parliament.

Hon. Consiglio Di Nino: Honourable senators, my concern is the opposite to that of Senator Grafstein. I can certainly see Senator Grafstein's point. If we had a blatant, very visible or black and white situation where there would be systematic abuse of this bill, I would hope that Parliament would act.

I address my question to Senator Kelleher. If this is not a black and white situation, how do minority groups then come to us and say that they believe their community is being targeted or is being profiled? If the question is not quite that clear, I do not want to be part of that debate. Does the honourable senator think, unless it was a very clear systematic abuse, that we would even get a hearing from the government on amending the legislation?

Senator Kelleher: I thank the senator for the softball question. Having had some experience with the RCMP and CSIS, I do not think it likely that abuses will come to our attention.

I can assure my honourable friend that it is extremely unlikely that these abuses will come to our attention through the report of the Solicitor General or the Minister of Justice because the fox is already in the hen house. If they have approved things that perhaps they should not have, they will not make mention of that in their report. It is human nature not to want to report on one's bad performance.

In response to the honourable senator's question, it will be very difficult for news of this kind of abuse to come to us in a way or in a manner that would convince this chamber to go ahead with an investigation on this topic.

Senator Grafstein: The point made by Senator Di Nino bothers me as well. It is not systematic; it is case by case.

We should congratulate Senator Joyal and Senator Gauthier for insisting that the Attorney General of Ontario intervene in the *Montfort* case. What are the consequences of that decision? There are very important, serious constitutional consequences. The Supreme Court of Ontario has affirmed that Parliament has a role in protecting minorities. If in fact there is a systematic abuse of minorities under this bill, we have uncovered a pre-existing tool that we felt was latent in the Constitution. I thank Senator Joyal and others for helping to force this issue to the courts because the Attorney General intervened. He supported the position that if minority rights were contravened, as language rights were in the *Montfort* case, those rights would be redressed.

If we have a more egregious attack on a minority group because of this bill, there are strong legal arguments now to be made case by case. In effect, the innocent have additional help, in the absence of a very clean and salutary piece of legislation, in the form of a piece of legislation that may have some flaws in it.

Senator Kelleher: I believe we have gone far enough on this particular issue.

Senator Murray: I should like to ask Senator Kelleher a question. It touches upon Senator Di Nino's concern about whether and how any abuses might be uncovered. In view of the fact that Senator Grafstein had suggested the appointment of a parliamentary commissioner as a watchdog over the exercise of these powers, I ask Senator Kelleher whether he would support an amendment to that effect if Senator Grafstein brought it forward.

Senator Kelleher: It is nice to have some friends sitting here beside me.

Senator Di Nino: You would second the amendment, would you not?

Senator Kelleher: Honourable senators, I was very proud of Senator Grafstein at the committee hearing when he so courageously stood up and recommended this watchdog. I am sure there must have been wincing in high offices on Parliament Hill over that statement. I do wish to commend the honourable senator.

If I make the motion and the honourable senator seconds it, I would be very pleased. If he wishes to make the motion, I would be more than pleased to second it. We have not seen such a courageous man in this chamber for a long, long time.

Senator Grafstein: I will respond briefly. Again, I held a strong view and still hold a strong view about that. It would have been preferable in this legislation to have an independent officer of Parliament survey excessive abuses of this legislation. I am an open-minded person. I heard the leader on this side remind us that there is nothing to prevent a committee of this place to investigate, to subpoena and to use all the powers of the Senate to call public officials to account.

At the first sign of any excessive police powers being used under this bill, I would hope that a committee would be quickly struck to investigate immediately such abuse. That will give this place the full power to examine and to renovate any egregious errors that may arise as a result of this bill.

The Hon. the Speaker: Honourable senators, we have run out of time. In order that we all know where we are, I will review. Senators are putting questions and comments to Senator Kelleher on his speech. I have Senators Beaudoin, Andreychuk, Prud'homme and Wilson all rising. I assume to ask questions.

Hon. John G. Bryden: Your Honour, I have been on my feet to try and ask a question for the last half hour. I have been chastised enough.

The Hon. the Speaker: Senator Kelleher, do you wish to ask for additional time?

Senator Kelleher: Yes.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

• (1520)

Senator Kelleher: If circumstances do arise where I think it would be right to call for an investigation, I know who I will call upon to second the amendment: my friend Senator Grafstein.

Senator Bryden: Honourable senators, I have a question for Senator Kelleher, since he is the only person I can reach; Senator Lynch-Staunton being beyond my reach.

The first one relates to the contention that, because a preliminary study was done by a Senate special committee, somehow — and this was supported by the Senate — there is an obligation to support the implementation of that report in its entirety, every T and every I. I believe — and I will see if you agree with this — that the purpose of the preliminary study was to review the subject matter of the bill. It was not designed to go into the details of the bill — that is, to do clause-by-clause examination. When the Senate committee was finished with reviewing the subject matter of the bill, it made a report and that report was presented to the Senate. Do you agree that that was preliminary to and does not interfere with the normal course of the bill going through this chamber?

Senator Kelleher: Honourable senators, I am sure the honourable senator will not be surprised when I disagree with him. When the Senate committee spent a whole week studying this bill and making the recommendations they did, I would think that they would have the integrity, when it came around for the second time, to stick with their initial recommendations.

Some Hon. Senators: Hear, hear!

Senator Bryden: To follow up on that question, the first time that the Senate had an opportunity to examine the details of Bill C-36 was at committee stage. That stage, as I understand this place, is the point at which senators are given an opportunity to question, to bring evidence and to exercise sober second thought.

My question really is: Does the sober second not apply at that stage only to provisions and only to the Senate itself? Is it not possible that, in the course of the detailed examination of the provisions and the implications of the bill at second reading, committee stage, and going through it in detailed clause-by-clause study, the Senate committee was in a legitimate position that such proposed amendments would not necessarily have become evident during the study of the subject matter of the bill, as opposed to a study of the details?

Senator Kelleher: With the greatest respect, I have a problem with this thesis. I sat there, as I think the honourable senator did, for a whole week in pre-study, and we seemed to call an awful lot of witnesses. We certainly delved into the details of the bill. The bill that came back the second time was almost the same as the first time. We did an awful lot of examination of that bill in pre-study. I did not hear much different from the witnesses the second time around. We still got the same complaints. I cannot agree with that thesis.

Senator Bryden: I would be surprised if you did agree with my thesis. On the other hand, last week in the committee, under our regular procedures, we called a lot of witnesses. We heard a lot of testimony. I assume there was some purpose to that. One of

those purposes might very well have been, would you not agree, that they might persuade us to change our minds somewhat to amend the overall proposals that we made in our first report?

Senator Kelleher: Honourable senators, I think we should end this debate at this point. I do not think either party will convince the other of the righteousness of their cause and their thinking.

Hon. Gérald-A. Beaudoin: I wish to move the adjournment of the debate; however, there may still be a question.

The Hon. the Speaker: Honourable senators, I was dealing with honourable senators who were rising to ask a question. I did not know that the Honourable Senator Bryden wanted to ask a question. It is up to the Honourable Senator Kelleher whether or not he wants to accept questions. I am sensing that he is not prepared to do so. Are you prepared to accept a question, Honourable Senator Kelleher?

Senator Kelleher: You can try me.

Senator Bryden: Let me ask the question. It is the question that is important, not the answer.

On the sunset clause, Senator Kelleher made the argument that Senator Lynch-Staunton and a number of people have made, namely, that there must be a universal sunset clause that applies at five years to the whole bill. The honourable senator was there last week, as was I. We had witnesses who disagreed vehemently with that proposal. We had some who wanted a one-year sunset clause; we had other witnesses who said, "You do not need a sunset clause at all; the real sunset clause is the Charter of Rights and Freedoms." We heard from Professor Monahan, who supported very much the amendments and the sunset clause only applying to the two provisions that are unusual to our existing criminal laws. Furthermore, he said, "Plus you have the right to review within three years, not after three years." His position was: "Why would you sunset the definition of 'terrorism'?" Either the definition is correct — and, if it is it does not need to be changed. If it is wrong, Parliament has the right to amend it and to change it. To go to what the minister indicated, she said "We do not sunset the provisions of the criminal law. We do not have a sunset clause generally to sunset the provisions against organized crime. We do not sunset our fight against child pornography. Therefore, that is the purpose of the selective sunset clause that deals with preventive arrest and investigative hearings.

The other point with which I know the honourable senator will agree is that the resolution that must be passed in order to renew those two provisions is as debateable, as —

Senator Kinsella: But not amendable.

Senator Bryden: — as any other provision that could come before this house or any other house. Do you agree with all that?

Senator Robichaud: "Yes" or "No"?

Senator Kelleher: The simple answer is "No." Calling on my past parliamentary experience, particularly as Solicitor General, and recalling the MacDonald Royal Commission into the activities of the Royal Canadian Mounted Police and activities that were uncovered on my watch when I was also theoretically in charge of CSIS, it is my feeling that there should be sunset clauses in order to put the government to the test.

Senator Prud'homme: Honourable senators, I will be very brief.

Senator Andreychuk: Do not say that, because you will be long!

Senator Prud'homme: I could not believe what I heard earlier, namely, that the question is important, not the answer.

I reluctantly voted for the War Measures Act in 1970. I said it on CBC to Rex Murphy. I discovered that I was lied to. Now the Solicitor General confirms that I was probably right in my assumption after the fact.

If we had then the kind of protection that the Solicitor General is attempting to put forward now, do you think we would have had better measures for protection against the abuse that took place in 1970 when hundreds of people were jailed for months?

• (1530)

The Hon. the Speaker: Honourable senators, it being 3:30 p.m. and pursuant to the Order of the Senate, I do now leave the Chair for the Senate to resolve into Committee of the Whole on Bill C-46.

[Translation]

CRIMINAL CODE

BILL TO AMEND—CONSIDERATION IN COMMITTEE OF THE WHOLE

On the Order:

The Senate in Committee of the Whole on Bill C-46, An Act to amend the Criminal Code (alcohol ignition interlock device programs).

The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Rose-Marie Losier-Cool in the Chair.

[English]

The Chairman: Honourable senators, rule 83 of *Rules of the Senate* states:

When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Honourable senators, is it your pleasure that rule 83 be waived?

Hon. Senators: Agreed.

Pursuant to rule 21 of the *Rules of the Senate*, the Honourable Anne McLellan, Minister of Justice and Attorney General of Canada, was escorted to a seat in the Senate Chamber.

The Chairman: Honourable senators, I welcome the Minister of Justice, the Honourable Anne McLellan, and her official, Mr. Hal Pruden, Legal Counsel for the Department of Justice. We are on clause 1 of Bill C-46. Minister, do you have an opening statement?

Ms Anne McLellan, Minister of Justice and Attorney General of Canada: Yes, thank you. It is a great pleasure to be here this afternoon. As some of you know, I have appeared before numerous Senate committees, but this is the first opportunity for me to appear before the chamber.

In May, 1999, as many honourable senators will recall, the House of Commons Standing Committee on Justice and Human Rights tabled its report on impaired driving, to which it attached a draft bill. This government adopted the measures found in the committee's draft bill and passed Bill C-82 in June 1999. Amongst the provisions in Bill C-82 was one that raised the Criminal Code's minimum period of driving prohibition on a first impaired driving offence from three months to one year; on the second offence, the minimum was raised from six months to two years; and for a subsequent offence, the minimum period of driving prohibition was raised from 12 months to three years.

As a result of Bill C-82, only a first offender may drive during the prohibition period, if the offender is under a provincial program for the use of an ignition interlock device during the remainder of the period of driving prohibition.

Therefore, in provinces that have such programs, such as Quebec and Alberta, they have found it difficult to attract repeat offenders to the Ignition Interlock Device Program. There is currently no ability to have a second offender use a provincial program for ignition interlock devices until a minimum two-year period has expired. For a subsequent offender, the minimum period before which an interlock program can be used is three years. The proposed amendments would permit a judge to authorize a second offender to drive after serving a period of six months, if that person is on an ignition interlock device program operated by a province or territory for the remainder of the prohibition period. In the case of a subsequent offender, a judge could authorize the person to drive after serving 12 months, if the ignition interlock device is used.

This approach follows the path taken by Parliament in respect of first offenders in 1999. It combines a punitive element, namely the period of absolute driving prohibition, with a longer rehabilitative period of prohibition during which the offender may only drive a vehicle that is equipped with an ignition interlock device.

I recently met with Ms Louise Knox, Canada National President of Mothers Against Drunk Driving, MADD, and other representatives of that organization. These representatives indicated that the ignition interlock provisions of the Criminal Code should be expanded to encourage all impaired driving offenders to participate in an interlock program, whether they are first or repeat offenders. I would add that, in the year 2000, the Uniform Law Conference unanimously passed a resolution from the Province of Quebec in support of ignition interlock devices for repeat offenders.

It would be naive to view ignition interlock devices as a magic bullet for the impaired driving problem. However, they do extend control over many who otherwise might drive while disqualified, and they will provide monitoring that offers public protection. In combination with other countermeasures, such as education, treatment and the existing provisions of the Criminal Code, they are an important tool in the fight against impaired driving.

[Translation]

I thank you for your attention and will now be happy to answer any questions you may have.

[English]

Senator LeBreton: Thank you, minister, for appearing and for your support of Bill C-46. In my remarks today, I raised a small concern that I would like you or your official to address: It is the use of the word "may" as opposed to "will" in clause 1.(1.1), which states: "In making the order, the court may authorize the offender..."

My concern is that the word "may" could provide a little "wiggle room" to the judiciary in actually implementing this particular law. Would you care to comment?

Ms McLellan: The official may want to respond to this as well, but I think we do not want the court to have to order someone to participate in this program in every circumstance. It is fair to say that there will be some situations where it is simply inappropriate, whereby the court would order the person into a mandatory treatment program because of his or her alcohol addiction. The word "may" is there so that the court can take into account the circumstances of the offender to determine whether it is an appropriate circumstance for the person to participate in this kind of program.

• (1540)

There will be situations where courts will decide that it is not appropriate to order a person into one of these programs. The addiction may be so great that another order would need to be made.

Senator LeBreton: Minister, I am sure you hear a lot about the general recognition of a lack of uniformity across the country in the application of the laws dealing with impaired drivers.

When you meet with the provincial attorneys general, do they look to the federal government and the Criminal Code to assist them in more evenly applying their laws dealing with impaired driving? Often we hear of cases where people clearly should be charged under the Criminal Code but police, because of legal loopholes particularly in provincial jurisdictions, will take the line of least defence. Are the attorneys general looking for more federal leadership in this whole area?

Ms McLellan: That is an interesting question, but it actually has not arisen in my meetings with provincial and territorial attorneys general. The Criminal Code is there. We have maximum sentences. We generally do not like mandatory minimums; we use them only in very limited circumstances. Mandatory minimums are usually challenged and we must be prepared to justify them to the courts under the Charter of Rights and Freedoms. In some cases, we are successful in defending the limit; in other cases, we are not.

If the police charge under the Criminal Code and the case is made out before the court, there will still be some variation in sentencing across the country. There is really no effective way to avoid that unless we impose a mandatory minimum sentence. Judges should have a certain degree of discretion to take into account the circumstances of the victims, the offenders, and the communities from which they come.

Our best tools are information and education, including judicial training of judges, particularly provincial court judges, so that they understand the gravity of the impaired driving offence. That is why we increased the penalties with Bill C-82. We are starting to see some impact in terms of conveying the societal message that drunk driving is simply not acceptable. The consequences can be horrific for families and communities, as we all know.

As with most other sections of the Criminal Code, we will not reach complete uniformity. Education of judges, police and the public will assist in more even sentencing across the country, sentencing that reflects society's moral condemnation of such conduct.

Senator LeBreton: That answer is a perfect segue to my final question, which is on judicial training. Is any study underway by the department or elsewhere of sentencing levels across the country since the increased maximum sentences were brought in, in 1999 and 2000?

Ms McLellan: I do not think so. It is probably too soon.

Mr. Hal Pruden, Counsel, Criminal Law Policy Section, Policy Sector, Department of Justice: Honourable senators, I believe it is too soon. Only a couple of years have passed. Statistics would be gathered by the Canadian Centre for Justice Statistics. They produce a periodical entitled "Juristat" biannually on impaired driving. We can expect that, in a couple of years, we will start to see statistics and have some idea of whether the 1999 and 2000 amendments are having an impact on the problem of impaired driving. However, I would hasten to add that there are many countermeasures that are being implemented by provincial and territorial governments in addition to those things that are being done by the federal government. One might have a very difficult time isolating the causes of those impacts to the criminal law changes.

Senator Kinsella: Minister, how much do these devices cost? How much will installation cost?

Ms McLellan: I will ask Mr. Pruden to answer that. The costs are generally borne by the offenders. My department has worked out the installation fee to be approximately the cost of a beer a day on the part of the offender, the drunk driver. There is a charge.

Senator Kinsella: Not being a beer drinker, can you tell me what that is in dollars?

Ms McLellan: Less than \$3 per day.

Senator Kinsella: How much does the device cost?

Mr. Pruden: The device is not sold to the offender. It is rented, more or less, by the offender.

Senator Kinsella: At \$3 per day?

Mr. Pruden: That is right. It would be up to the province to ask the offender to pay a fee. The province could choose to make the device available without a fee to the offender.

Senator Kinsella: The device is owned by the province?

Ms McLellan: Yes. Provinces can choose to adopt these programs. Alberta had the first program in North America that was province-wide. Then Quebec adopted the program. A number of other provinces want to adopt the program but they will not do it without this amendment because they want to be able to include second and subsequent offenders.

Senator Kinsella: In terms of fairness in the administration of justice across Canada, I am satisfied that there is no disadvantage for those who are less rich than others at \$3 a day, the price of a beer.

What about the symmetry of application across the country? As the Attorney General for Canada, do you have concerns that, in some parts of Canada, a divergence or diversity of corrective measures will exist?

Ms McLellan: That diversity exists now. Only two provinces have these devices. Others want to participate, but there is a cost to the province and it is a matter of provincial jurisdiction. The provinces will choose whether they want to participate in the program or not.

As we have seen in the United States, the effectiveness of the devices in keeping disqualified drivers out of their cars and preventing them from doing damage to innocent people will convince more provinces to take up this device as a cost-effective and administratively efficient tool.

• (1550)

Senator Kinsella: Is the device set at a certain level of how much alcohol is measured? Is it a minimum level that relates to the blood alcohol level?

Mr. Pruden: I am told that the devices can be set to a prescribed limit. If, for example, the province chooses to set zero as the limit, many scientists tell us that you can be confident that, if you are measuring at 20 milligrams of alcohol in 100 millilitres of blood, this is not simply showing an accidental alcohol reading but it is actually showing breath alcohol. The province could choose to use 30 or 40, if it wanted, but it is up to the province to set the level.

Senator Kinsella: With regard to comparative studies with other jurisdictions, can you tell us what the evidence is in a sentence or two?

Mr. Pruden: There have been studies in the United States as well as in Alberta and Quebec. The studies show that the recidivism is reduced during the time that the person is using their alcohol ignition interlock device. After that time, most of the studies show that the number of people that tend to have recidivism start to parallel with people who did not use an interlock device. In Quebec, they found there was a more lasting effect than some of the other studies had shown. However, it should be remembered that, in the Province of Quebec, the alcohol ignition interlock device program was heavily advertised. That may not have been the case in other studies where they did not have the positive results that Quebec has had.

Senator Atkins: I congratulate the government for bringing forward this legislation. It is long overdue. Have you had any reaction from the Canadian Automobile Association or other associations that might be interested in this legislation?

Ms McLellan: No, because the costs of this program are borne by the provinces and the interlock devices are made available by the provinces. It is not a case like auto theft, for example, where we do deal directly with the automobile manufacturers because, for the cost of \$50, you can insert a device that is fairly helpful in preventing auto theft. You then get into interesting questions with the car manufacturers on whether they should build it into every car, as well as with the insurance industry and consumers. To my knowledge, we have not had the same discussions relating to the interlock devices that we had with the automobile manufacturers relating to devices in and around auto theft.

We are not aware that they have expressed an interest in this measure because it is not a cost or burden on them; it is a device that is leased to the owner of the vehicle after a conviction and that is installed in the car at that time. I do not think there has been any discussion in the jurisdictions in terms of putting it into every vehicle that is manufactured, unlike the auto theft device where more and more of the manufacturers of cars are saying that it makes a lot of sense to build it in for the extra \$50.

Senator Atkins: That was my next question. Do you envision at any time in the future where it would be part of standard equipment in an automobile?

Ms McLellan: I would think not. We all run the risk of having our car stolen — it is an event over which we often have no control, unless we are careless or negligent — whereas I would like to believe that very few of us drink and drive. Therefore, I doubt whether the automobile manufacturers would see it as a particularly attractive selling device. Most consumers would say, “I do not drink and drive. Therefore, I do not need this.” Consumers also know that, if one is convicted, it may be made available by a province, depending on the jurisdiction in which one lives. I do not anticipate it being built into an automobile as standard issue, the way we are now starting to see the auto theft devices being built in.

Senator Atkins: Consumers may not admit it.

Ms McLellan: That is always a risk.

Senator Atkins: Listening to the statistics given by Senator LeBreton, there are more people driving who have had a drink.

Ms McLellan: There is no question that there are still too many people who drink and get behind the wheel of a car, with tragic consequences. It is an interesting question. I will be more than willing to take it up with the manufacturers and get back to you on that. It is not a discussion that we have had; it is not a discussion that consumers, MADD or others who work with drunk driving have raised with us. I could follow up on that for you.

Senator Atkins: My guess is that you would get resistance from the manufacturers.

Ms McLellan: That is probably right. In fact, we still have not reached the stage in this country where every automobile is produced with a \$50 antitheft device in it. The insurance industry tells us that it makes perfect sense, but we are still not there in relation to that issue. I think it will take some time.

Senator Di Nino: My colleague's question to the minister begs a follow-up in the sense that we often lend our vehicles to our family and friends. For instance, at the stage of life when teenagers are experiencing different things, they may have that extra drink that pushes them over the legal limit. I wonder whether it might not be advisable for the government to take a stronger leadership role on this issue, if it could be addressed without a tremendous cost to the manufacturers. Since this gives us an opportunity to have a dialogue with the manufacturers, would it not be advisable to perhaps push this a little so that we could have safer roads for all of us?

Ms McLellan: I will certainly have my officials discuss this matter with the automobile manufacturers. We have not addressed it with them at this point, but I am more than willing to see where their views lie. The motor vehicle is being transformed with all sorts of built-in devices that we would not have anticipated even 10 years ago. Let us have that discussion and see what we hear back from them on whether a practical, cost-effective approach could be taken.

Senator Di Nino: Would you undertake to inform us on the results of those discussions?

Ms McLellan: I would be happy to do that.

Senator Atkins: I would remind the minister that, when the question of seat belts was debated, the resistance originally to seat belts was unbelievable. I am sure some of those arguments would be relevant to the discussion on installing these kinds of devices.

Ms McLellan: Indeed. That is true.

Senator Banks: Particularly in Alberta.

Senator Roche: I would like to welcome my fellow Edmontonian to the chamber and tell my colleagues how proud the City of Edmonton is of the minister.

Some Hon. Senators: Hear, hear!

Senator Roche: I want to come back to this question of lack of uniformity across the provinces. I would make special reference to Alberta, because Alberta is known for having strong programs to combat impaired driving. For example, a second conviction of impaired driving requires the driver to take a weekend live-in course in order to get their licence back.

• (1600)

I am wondering how effective the programs in Alberta are relative to other provinces. Do you have statistics or records that show whether the recidivism rate is lower in Alberta as a result of our strong programs? Do we occupy a place where other provinces could look to the programs in Alberta in order to emulate them?

Ms McLellan: Mr. Pruden is indicating to me that we do not have those kinds of statistics, but you raise a good point. The federal government could show leadership here. Obviously, there are significant parts of the issue around impaired driving that fall under provincial highway traffic legislation and motor vehicle legislation. However, the federal government could play more of a leadership role in ensuring that we are collecting the information around the experience of the provinces on the kinds of approaches that they are taking on this issue and what has been learned.

The provinces informally share among themselves. Provinces have watched the experience of Alberta and Quebec as it relates to the ignition interlock device. As I say, some provinces are interested in pursuing this matter if this amendment is made available.

I cannot say that we have qualitative or quantitative information about whether the approach of one province to dealing with drunk driving is more effective than another's approach, other than that we do have some evidence around how these ignition interlock device programs work when people use them. The devices seem to be quite effective.

You raise a good point. We do need more information on what seems to work, and we need to be able to share that information with provincial and territorial jurisdictions.

Senator Roche: On this matter of the automobile manufacturers building into every car an alcohol ignition interlock device so that it would be standard, would you agree that there is an argument not to do this on the grounds that the presence of such a device in every car would be a tacit admission that it is okay to drink and drive, but you just should not drink so much that you are going to get impaired or caught? I thought the idea of Mothers Against Drunk Driving was to oppose all drinking before driving. Thus, the presence of this device in every car would give every teenager the idea that they can drink up to a point and then drive.

Ms McLellan: Your point is very interesting. Certainly, no one would ever want to create the impression that it is okay to drink and then get into an automobile to drive, especially not with teenagers. Under our law, whether the limit is 0.08 or 0.05, there is a suggestion that whatever the level, it is okay to have something to drink and drive. However, we do not want to create the impression with young people that it is okay to drink and drive.

The argument on the other side is that if you get into that car, blow into the built-in device and are over the limit, the car would not start. It is a preventive measure. It acknowledges the reality of life that there are some people of whatever age who will try to drink and drive.

Senator Fairbairn: Senator LeBreton made what I thought was an astounding statement in her speech today, and perhaps she can help me with this. She pointed out that in her organization's efforts on this issue, they had run into some resistance.

Senator LeBreton: To clarify, I was using the opportunity in my speech to also make a pitch for 0.05 as the maximum level. I was talking about the Canada Safety Council's objection, which was totally refuted by all the evidence. I was writing a note to explain that.

Senator Fairbairn: Has the minister had similar representations or discussions with that particular group?

Ms McLellan: The Canada Safety Council made it very clear in the paper just last week in a public letter that they are opposed to lowering the level from 0.08 to 0.05. I have decided to refer the matter back to the Standing Committee of Justice and Human Rights. It looked at this issue two years ago. At that time, it heard evidence from law enforcement agencies and perhaps the Canada Safety Council as well. I am not sure who appeared before them at the time. That committee determined that it would not be effective to lower the rate from 0.08 to 0.05.

When I met with MADD two weeks ago, they told me that they had done much research since then. They suggest that new scientific studies indicate that in jurisdictions that have dropped the level from 0.08 to 0.05, there has been a significant decrease in the amount of drunk driving. I have asked the committee to revisit that issue in light of these new scientific studies and the experiences of jurisdictions like Australia and some states of the United States where there are lower levels. We will see.

It is one of those issues that can be dealt with well in committee where they can hear from different witnesses, including the Canada Safety Council and law enforcement agencies. Everyone can come to present their case and their evidence to the members of the standing committee.

Senator LeBreton is quite accurate in the saying that the Canada Safety Council took a very strong position last week against lowering the limit.

Senator Stratton: My question goes back to the installation of devices in all autos. Would not the installation of those devices be a presumption of guilt? If they are installed in every automobile or vehicle across the country, one would assume that the person is guilty before they turn the ignition.

I do not believe that is possible. I am not a lawyer. I think you would lose on that bet 10 times out of 10. Seatbelts do not presume the guilt or innocence of any crime, but they do save lives. This device assumes that you are guilty every time that you get into the car because you have to breathe into the device before you can start the car.

Ms McLellan: I do not think it leads to a presumption of guilt or innocence. I am not suggesting that this is a direction in which either the manufacturers or others are ready to go at this time. It is certainly not something that I have heard from MADD or other organizations that deal with the issue of impaired driving.

I suppose the argument would be that no presumption is involved. This bill acknowledges, however, that there are those who will get in a vehicle after having consumed some alcohol and would, as a preventive measure, blow into the device if one were behaving responsibly. If you have had a few beers at the bar and your car had one of these devices, you could blow into it, and it would tell you in the most concrete terms, on the basis of the device and the level at which it is set whether you should be driving. If you are over the level, the car would not start.

I suppose the device could be seen as a responsible and preventive measure, acknowledging the human fact that, every now and then, people go to a bar or to a party, have a few drinks and are not sure as to the level of their blood alcohol. Right now, I do not think that this is a road that we want to go down.

Senator Stratton: I do not believe we should do it either. I cringe at the thought of having that kind of big brother approach in this instance.

How do you get around the device? Has there been an exploration into the situation where someone who has not been drinking breathes into the device to get the car started and then the driver takes over the driving?

Ms McLellan: I believe Mr. Pruden is best placed to respond to that question. That is a legitimate concern. Keep in mind though that these are court-ordered and there are conditions. Therefore, if one attempted to get around the device, and was in an accident, picked up for any reason and caught or someone informed on them in terms of what they were doing, there would be serious consequences because they would end up serving the remainder of their sentence. In most cases I should think they would end up serving the remainder of the mandatory prohibition, which means they cannot drive at all. In fact, they might even end up, if the conduct persisted, arrested and jailed.

Mr. Pruden: The Traffic Injury Research Foundation has held national meetings on this topic in the year 2000 and the year 2001. I had occasion to attend each of those two meetings. The report on their September 2000 meeting indicates that there are several tampering or circumvention attempts that people have

tried to make in the past, and it is believed they now have successful ways of defeating those kinds of attempts.

For example, when the person is blowing into the ignition interlock device in providing their breath sample they must also provide a hum tone. They have to learn how to do that. It is not particularly easy, I am told, especially if you have been drinking. Even the sober person would have to know the hum tone. Another addition they can have is a breath pulse code so that they must give certain breath pulses in order to use the device.

I would say, with a sober individual, perhaps the greatest way of preventing that is the fact that, as a sober person, why would I want to see either the driver taking me as a passenger or driving off by himself or herself down the road? Why would I want to give them the ability to start?

Even though the person may be silly enough to give a sample so that the person may start their vehicle, there is a requirement under these programs for a retest at intervals. The driver is alerted to pull over, stop and provide another sample at intervals. If the driver does not obey that requirement to pull over, it is recorded in the data recorder of the device and this recorder device is checked when the person is called in for their regular ignition interlock device maintenance. They have a tight control on what is happening with that device and with that driver.

Would it be theoretically possible for a sober person to get someone started? Yes. I think, however, there are some good systems there to prevent that.

Senator Banks: I have a supplementary question for Mr. Pruden. Did I understand you to say that the measurement that the device takes is that of breath as opposed to blood-alcohol content?

Mr. Pruden: Just as we do now, with the screening devices and approved instruments that peace officers use, this device will also something that will measure a deep lung breath sample. There is a conversion so that we then know what the concentration of alcohol will be in the blood, just as we now know what that conversion will be when a person gives their deep lung sample on the screening device or the approved instrument.

Senator Banks: There are examples of such devices having certain kinds of mouthwash show up, as I understand, in breath alcohol measurements. I wonder whether there is a corollary, an opposite masking substance that could be used in this device in one's car.

The reason I ask the question is that it is one thing to be stopped by the police randomly and to take a breathalyzer test before a policeman, but it is quite another thing to be able to prepare in the relative privacy of your own car some means by which to mask your alcohol content. Is there any such known substance?

Mr. Pruden: Again, at the September 2000 meeting held on this topic by the Traffic Injury Research Foundation in Montreal, it was indicated that there are temperature and/or pressure sensors that can be incorporated as a way to ensure that the sample is a deep lung air sample and not something that is being introduced by mechanical device, for example. I can think of the example of someone trying to introduce into the machine a sample of air or breath held in a balloon, and apparently the sensor can help prevent that kind of situation.

The Chairman: Do honourable senators have any other questions?

Madam Minister, thank you very much for your time. Thank you, honourable senators.

Honourable senators, shall clause 1 carry?

Hon. Senators: Agreed.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

[Translation]

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rose-Marie Losier-Cool: Honourable senators, the Committee of the Whole, to which was referred Bill C-46, to amend the Criminal Code (alcohol ignition interlock device programs), has examined the said bill and has directed me to report the same to the Senate without amendment.

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Carstairs, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[English]

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada

Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall,

That Bill C-36 be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

“Expiration

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition “United Nations operation” in subsection 2(2) and in the definition “terrorist activity” in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4.”.

The Hon. the Speaker: We resume our debate on the motion of Senator Lynch-Staunton to amend Bill C-36. We were dealing with a question from Senator Prud’homme to Senator Kelleher, who is not here. I assume we cannot continue with that.

Hon. Marcel Prud’homme: Honourable senators, I am very happy, as Senator Kelleher gave me the answer on his way out.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to rise in support of the amendment by Senator Lynch-Staunton. I know that a number of other senators have indicated their interest in rising and speaking. Perhaps I will make a few of my own comments now and then move the adjournment of the debate in the name of one of the senators who has indicated they do wish to speak.

The motion in amendment is very important because it speaks to a proposition that has been adopted already by this chamber, namely that a sunset clause be applied to this whole bill.

Honourable senators, it has been said that when interference with human rights and civil liberties is most likely, protection of these liberties is least available. With Bill C-36, the government received the support of this house, in principle, and the support of the other House, for the principle that the executive should be given additional tools to combat terrorism.

● (1620)

However, the clear expectation, in my mind at least, was that this would be done in a measured and balanced way. That was the pith and substance of the first report of the Special Senate Committee on Bill C-36. Unfortunately, what we see in the bill that has been returned is that the government has failed to reciprocate by making available tools for the protection of Canadian human rights and liberties.

The government tells us that the world changed on September 11, 2001. Indeed, it did. However, if the debates from the Second World War, an event that also changed the world, are any guide, the government, which manages with an eye to public opinion polls, will obviously be the government that will avoid being criticized for insufficient vigour in the protection of what is perceived as being in the best interests of the state. During our watch, we have to add to this mix the daily dose of guidance from CNN. I had expected much better from the government in terms of human rights protection, for the lessons of the history of human rights abuses in times of crisis is not a very promising lesson.

During the Second World War, here in Canada, government was all too willing to set aside Canadians' rights for what was then believed to be in the national good. However, acting in fear and in haste, people and institutions acted badly. I fear that without the kinds of amendments such as the one proposed by Senator Lynch-Staunton we may be seeing the first act of a repeat performance.

From the beginning of our work in Parliament on Bill C-36, the government has seen our willingness to accept the request of the executive for extra powers to combat terrorism. Therefore, it is difficult for me to understand why the government would show such unwillingness to accept Parliament's contingent principle, to the effect that these extra powers would be given but that they must be accompanied by extra human rights safeguards. The amendment of my colleague speaks simply to a technique of giving extra protection.

I encourage honourable senators to support the amendment.

Hon. A. Raynell Andreychuk: Would the Honourable Senator Kinsella accept a question? It refers to the amendment and to what Senator Kinsella has been speaking to.

Senator Kinsella: Yes, of course.

Senator Andreychuk: Senator Grafstein talked about systematic human rights abuses and whether they would be caught under the existing provisions in the protections, such as they are, that are in the bill now. That was in response to Senator Di Nino, who asked, What about abuses?

Is it the understanding of the Honourable Senator Kinsella that there is a concern, pervasive in Canada, that there will be systematic abuse, for which I think there is remedy in the

international situation? Is it the fact that there will be some intolerable abuses, but not necessarily systematic abuses? Systematic abuses would seem to go to some sort of design, plan or scheme by either authorities or otherwise. Is it not more in the haste, the hurry and the zeal to catch terrorists that the bounds will be overstepped and that innocent people will be hurt?

Senator Kinsella: I thank the honourable senator for that very important question. Indeed, my greatest concern is with systemic discrimination. People do not like to use the term "racial profiling." In the committee's pre-study of the bill, we asked the Commissioner of the RCMP whether they used racial profiling. Obviously, I did not expect him to admit that they were. However, the commissioner said that the RCMP does do profiling using other criteria.

Honourable senators, it is the effect of the conduct that counts, not the intent. I do not believe that any of our peace officers act in bad faith. In Canada, we are blessed with a public security cadre of professionals. I do not look for ill will. However, I am concerned with the effect of a system. If there is a system of preventive arrest, if there is a system of lists, it is the unintended effect that concerns me.

I do not want Canada to have its own *detenidos desaparecidos Canadienses*, as they might say, which has occurred in other countries. I have heard from many members of the visible minority communities of Canada that that is their fear. They fear that at airports and at ports of entry people with dark skin will be picked on. It may not be on the basis of race. However, that will be the effect.

Whether or not we will be dealing with what the United Nations envisages under Resolution 1503, of gross and consistent patterns of human rights violations, I do not know, but I think it is enough of an amber light for us to be very cautious.

To be perfectly clear, I am prepared to recognize that we live in a changed environment, that we have a right to human security and that we are wise and prudent to give the executive sufficient tools to respond to threats to human security, but it is not a forced-choice situation. We can do that, and at the same time, we have enough imagination and creativity to set in place counterbalancing mechanisms. That is all we have been asking for.

Senator Lynch-Staunton's amendment makes it very clear. It is based upon the same kinds of principles, such as the notwithstanding provision of the Charter.

The committee's first report was wise and prudent. It recommended a five-year sunset clause on the entire bill. In my opinion, that is the proper course of action. I was particularly pleased that the Senate adopted that report, notwithstanding having learned that the Minister of Justice did not want a five-year sunset provision but a similar type of mechanism that applies to but a couple of provisions.

• (1630)

Honourable senators, history will judge us very harshly if we do not maintain the position that has been so broadly embraced by Canadians, as articulated in the first report of the special committee.

Hon. Consiglio Di Nino: Honourable senators, first, the Honourable Senator Kinsella must have his rose-coloured glasses on today. I am probably one of the few in this chamber who was subjected to, not endemic discrimination, but a certain treatment by police forces when I was a 13-year-old boy and came to this country in 1951. The terms used in dealing with me on the streets of Toronto are not the terms that I can use in the Parliament of Canada.

The honourable senator is surely not suggesting to me and the rest of our colleagues that 100 per cent of our police officers, of the members of our security agencies — every single one of them — is cognizant of human rights and will act in an appropriate and proper manner. That is a dream. I think that there will be misuse and abuse. Hopefully, it will be minimal and not systematic. I agree we have grown a great deal since I came to this country but, dear colleague, please do not tell me that you honestly believe that every police officer, every member of the RCMP, every member of all the security agencies that we have such as Customs, or what have you, will have a thorough and full understanding and will have in their hearts the ability to say, "I will treat this person with equality." Will the honourable gentleman please respond to my remark?

Senator Kinsella: Honourable senators, I was attempting to make a distinction between gross and consistent patterns of discrimination and systemic discrimination. Systemic discrimination does not even speak to the issue of intent. I was not going to go down the line of intent. I may be said to be wearing rose-coloured glasses, but I am simply saying that I accept on a prima facie basis that professionally trained peace officers are just that, professionally trained peace officers. However, there may be some question as to whether their training is appropriate and whether there are too many cases that either come before human rights commissions or go before other of tribunals. The answer to that question may sustain the proposition that the honourable senator is making. Unfortunately, he may be right. There are, indeed, these kinds of cases and we do need training in this area for our peace officers.

However, I was not resting my case on that. I was accepting that peace officers act in good faith. The record of reality is that there are instances of all kinds of abuses. More important, unless we have the ability within our system to ensure that this will never occur, in the way our public administration will operate, we must deal with the unintended discrimination that will occur.

Senator Di Nino: Surely, honourable senators, the role of the Senate is to do whatever we can to protect society, and particularly minorities, from these unintended or even occasional, to the degree that it is possible, occurrences of

discrimination and racism or mistreatment. Is that not what we are here for?

The Hon. the Speaker: Honourable senators, it has been moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, that further debate on Bill C-36 and, in particular, the motion in amendment of Senator Lynch-Staunton to Bill C-36, be adjourned to the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[Translation]

BUSINESS OF THE SENATE

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, I would like to begin with Item No. 1, under Reports of Committees, followed by Item No. 3, second reading of Bill C-45 under Bills, and then move to Item No. 8, second reading of Bill C-39.

[English]

THE ESTIMATES, 2001-2002

SUPPLEMENTARY ESTIMATES (A)—REPORT OF NATIONAL FINANCE COMMITTEE ADOPTED

On the Order:

Resuming debate on the consideration of the tenth report of the Standing Senate Committee on National Finance (Supplementary Estimates "A" 2001-02) tabled in the Senate on December 4, 2001.

Hon. Roch Bolduc: Honourable senators, this year will stand out in the history of our parliamentary system as a record year for legislation designed to increase the already excessive power of the government over the lives of the people of this country.

I fully understand that the balance between security and individual liberty must be reviewed periodically, especially in unsettled times when we face new and complex challenges, but the fact remains that before Christmas 2001 the Senate will probably have endorsed a whole series of laws that give the executive branch additional powers both to regulate and to act. By the "executive branch," I mean the government itself and certain of its agencies — Crown corporations like the EDC; the Minister responsible for the International Joint Commission on boundary waters — and we will talk about that in a few days; police forces like the RCMP; information and communications agencies; and officials of specialized agencies such as Customs and Revenue; and of certain departments like Immigration, Transport, Justice and Environment.

While I concede the justification for delegating regulatory powers in order to implement a given policy, I find it deplorable that the principles underlying certain government actions, not to mention their implementation criteria, are not spelled out in legislation but are left to the discretion of the executive.

Out of laziness, inertia or stubbornness, the government has, since this past September, demanded that parliamentarians give it regulatory powers in all kinds of public policy areas — powers that are no longer hammered out in the legislative arena but, rather, chosen by executive fiat. This executive intervention goes well beyond the areas where security considerations make the balancing of freedom and control a subtle and sensitive matter.

We have reached a point where the Royal Prerogative, historically used in making international treaties, is no longer an exception in our legislative scheme of things but has become common in dealing with domestic issues. It has shaped the thinking behind a whole clutch of laws that all tend to the same outcome: permitting the government and its agencies to do what they like, without restriction and without boundaries defined by Parliament.

At the speed things are moving now, we will soon be sounding the death knell for parliamentary oversight, because we will have finished by reversing the traditional approach and leaving the government free to do everything it likes, except what is expressly forbidden. In other words, we will have constructed a sort of Criminal Code applicable to the state. For our constitutional system, with its roots deep in Western liberal tradition, this amounts to a 180° turn.

We already have plenty of examples of abuse of the executive power in the area of financial administration. In March 2000, for example, a month before the end of the fiscal year, a private company was created by the government and given, via the contingencies vote, which historically was never meant for such a purpose, several million dollars that it could spend under some as yet non-existent program. In the 2001 Supplementary Estimates, we were asked to rubberstamp this expenditure after the fact.

• (1640)

The government, to deflect yet more scathing criticism from the Auditor General, claimed that the federal Companies Act applied to a public body after the allocation of public money. I call that a flagrant abuse of power designed to evade the oversight of the two Houses of Parliament via a legal trick. Not only the Auditor General but even the Speaker of the House of Commons spoke out against this slight of hand.

There are other examples of the executive's excessive grip on the budgetary process. About two thirds of the budget, the portion known as statutory expenditures, is not the object of any annual review by Parliament. This portion includes debt

servicing charges, transfers to the elderly and the unemployed, equalization transfers, and transfers for health care, post-secondary education and social welfare. Other examples include the contributions to many granting agencies, the amounts paid to non-governmental corporations such as the Foundation for Innovation, and other expenditures that are outside the oversight of Parliament.

That is not all, honourable senators. International commitments come under the personal management of the Minister of Finance, not only in respect of the World Bank and the other banks, but also in respect of countries to which Canada allows debt remission. There are also the discretionary powers of the Canadian International Development Agency, which handles billions of dollars. That agency was never created by law, but rather by an order in council.

On top of all these executive decisions, there are grants to certain Crown corporations such as VIA Rail, compensation to victims of natural disasters and droughts, payments under new collective agreements entered into by Treasury Board, and so forth.

The end result is that Parliament's annual oversight applies, for all practical purposes, to barely 15 to 20 per cent of the government's Estimates.

Our political system is based on the British model. Historically, it is already strongly biased in favour of the government because the government is made up of the people who lead the majority party in the House of Commons. However, this is no reason for increasing still further the centralization of powers in the hands of the executive. One fine day we will have to start demanding a political system with a drastically different division of powers. I, for one, reached that point quite some time ago, although I recognize the attachment that most Canadians feel toward our system of responsible government.

Honourable senators, if you wish to safeguard the core of our democratic political system, I urge you to resist resolutely the government's thirst for power, which goes beyond an almost innocent arrogance to a deplorable tendency to undermine good government in this country. I would appreciate it if some of the influential senators on the other side of the chamber would convey this important and serious message to their friends in the government. The Leader of the Government in the Senate is a person who has proved her effectiveness in the past. I urge her to tell her government colleagues that my comments today are simply the voice of reason opposing the gradual erosion of Parliament's essential role. If the Senate has any *raison d'être*, it is certainly as a body responsible for cooling the zeal of ministers to do more good for the people than the people want.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed

Motion agreed to and report adopted.

APPROPRIATION BILL NO. 3, 2001-02

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, this is a government bill, but Senator Lynch-Staunton moved adjournment of the debate. If honourable senators will recall, there is a matter of some substance that needs to be dealt with in the order of \$50 million. There was an indication that we would have information around that point from the minister. Therefore, in consideration of where we are on the Order Paper, Senator Lynch-Staunton wishes to stand this item.

Order stands.

YUKON BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Christensen, seconded by the Honourable Senator Chalifoux, for the second reading of Bill C-39, to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts.

Hon. Ethel Cochrane: Honourable senators, I am pleased to have an opportunity today to make a few remarks on Bill C-39, to replace the Yukon Act. This bill is a positive step for the territory and for the people of the Yukon. It provides the legislature of the Yukon with powers over land and resource management, as well as water rights in the territory. It is an acknowledgement that devolution is more advanced in Yukon than in the other territories, and recognition that, historically, Yukon administrations have proven their capacity to manage increasing responsibilities.

Discussions to transfer management responsibilities to the Yukon government began in 1996. Two years later, the Yukon

Devolution Protocol Accord was struck to guide the devolution process and to allow for unresolved land claims to be negotiated.

In October of this year, Yukon Government Leader Pat Duncan and Minister of Indian Affairs and Northern Development Robert Nault signed the Yukon Northern Affairs Program Devolution Transfer Agreement, in which Canada undertook to introduce Bill C-39.

This bill is simply the latest development in the evolution of Yukon. For more than 35 years, the territory has administered its schools, its public works and other local matters. In 1987, for example, the Mulroney government tabled guidelines for the transfer of federal programs to the territories. These guidelines indicated that the transfer should only occur in consultation with Aboriginal peoples and that it should represent the interests and priorities of the territory.

In 1988, the Yukon government leader, together with the Minister of Indian Affairs and Northern Development, signed a memorandum of understanding, citing a commitment to continued devolution. Since that time, responsibility for hospitals, community health, mine safety, fisheries, and oil and gas have all been conferred on Yukon.

However, despite the territory's expanding authority, there had been no major review of the Yukon Act since the 1950s. In fact, it no longer accurately reflected the practice of responsible government. Bill C-39 is an attempt to update the act, essentially bringing it into step with the 21st century.

So far, the bill has met with seemingly unprecedented cooperation from all sides of the house. More importantly, however, public opinion polls indicate that the majority of the Aboriginal and non-Aboriginal residents support the transfer of the authority.

As I already stated, Bill C-39 modernizes the language of the Yukon Act and passes the administration and control of public lands and resources, as well as water rights, to the Yukon government. However, there are also provisions to ensure that the devolution of these powers in no way prejudices the interests of First Nations in the ongoing land claims and self-government agreements in Yukon.

The Government of Canada will also retain the right, where there is an issue of national interest — for example, for the purpose of national defence or the creation of a national park — to assume administration and control of any public lands from the Yukon government.

The bill goes a long way to ensure accountability by specifying that the Auditor General of Canada will continue to conduct annual audits of the Yukon government and report the findings to the legislative assembly. However, it should be noted that there are provisions that allow the commissioner, acting with the consent of the executive council, to appoint an auditor general of Yukon at some time in the future.

• (1650)

This legislation also provides some level of security for the 240 permanent federal employees working with DIAND's Northern Affairs Program. These people will be offered opportunities with the Yukon government on par with their federal jobs at least six months prior the date of devolution. This is an important element. We cannot underestimate the value of job security for these workers who have served the territory's people and interests so well in the past.

Let me be perfectly clear: We support this bill. For Yukon, it means gaining the power to make her own decisions on matters affecting her jurisdiction, powers that were outlined in the devolution transfer agreement. It means that politicians and bureaucrats in Ottawa will not be controlling Yukon business from afar, that decision making will be placed in the hands of the people most affected by those decisions. It means Yukoners, like Canadians living in provinces, will be entitled to control their Crown land and their natural resources — their forests, mines and minerals. It means that the Yukon government will have the power to make laws affecting the exploration, development, conservation and management of its own non-renewable resources. Simply put, the proposed act provides that local priorities will be directly represented and that minority interests will be safeguarded.

That is not to say that the federal government will be entirely outside the process. The federal minister and the Governor in Council will still have a strong presence in the territory's business. After all, the Commissioner of Yukon will be appointed by an order of the Governor in Council. Of course, it is our hope and expectation that the appointment will go to someone who is well-versed in Yukon affairs and who has an intimate understanding and knowledge of the unique challenges that face the territory.

This proposed legislation also requires that the Commissioner of Yukon follow any written instructions received from the Governor in Council or the minister. The Governor in Council can also direct the commissioner to withhold assent to any bill introduced by the legislative assembly. In fact, the Governor in Council can veto any bill within a year after it is passed. It should be noted, however, that some powers of the commissioner would expire after 10 years. Certainly, under this bill, significant room remains for federal involvement in Yukon affairs.

In keeping with the theme of consultation that has permeated every level of these negotiations, I just have one observation, and that is the obvious absence of the Kaska Nation. They are not part of the Council of the Yukon First Nations and have not been represented. They have enunciated a number of concerns from the outside but have not had a voice within. It strikes me that the concerns they have raised are similar to those highlighted by others appearing before committee with regard to another bill, the Nunavut Waters Act.

Quite simply, Bill C-39 will affect every resident of the Yukon and, honourable senators, we believe the overall impact will be a positive one. At its fundamental level, the bill is about putting power in the hands of the people and placing decision making

and responsibility for administration on the shoulders of the people who are most affected by the actions.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time, honourable senators?

On motion of Senator Robichaud, bill referred to Standing Senate Committee on Energy, the Environment and Natural Resources.

[Translation]

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT—
VOTE DEFERRED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, An Act in respect of criminal justice for young persons and to amend and repeal other Acts.

And on the motion in amendment of the Honourable Senator Moore, seconded by the Honourable Senator Watt, that the bill be not now read a third time but that it be amended,

(a) in clause 38, on page 38,

(i) by replacing lines 27 and 28 with the following:

“for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and

(e) subject to paragraph (c), the sentence“, and

(ii) by renumbering all references to paragraph 38(2)(d) as references to paragraph 38(2)(e); and

(b) in clause 50, on page 57, by replacing line 23 with the following:

“except for paragraph 718.2(e) (sentencing principle for aboriginal offenders), sections 722 (victim impact state-”

Hon. Pierre Claude Nolin: Honourable senators, I wish to speak to the amendment moved by Senator Moore. This amendment was contained in the report of the Senate Standing Committee on Legal and Constitutional Affairs, which the Senate rejected.

Accordingly, I would like to recognize the courage and determination of Senator Moore in reintroducing this amendment at third reading of this bill. It gives me the opportunity to tell you why I consider it should receive the support of this chamber.

The amendment simply proposes that the principle in paragraph (e) of section 718.2 of the Criminal Code be applied to the particular circumstances of aboriginal youth in the youth criminal justice system. The purpose of this is to make it clear that a court which imposes a particular sentence on a young person must comply with the principle that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders — which you will find in clause 38, if Senator Moore's amendment is adopted.

The amendment also provides that the youth court can refer directly to paragraph 718.2(e) of part XXIII of the Criminal Code concerning sentencing — which would be added to clause 50 of Bill C-7.

As a reminder, section 718.2(e) reads as follows:

...available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

In her speech to persuade us not to support the committee's report, Senator Carstairs made three points, which I will summarize.

First, Bill C-7 already contains provisions requiring youth courts to take into consideration in sentencing available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders. I could list each of the provisions to which she referred, but will proceed to the crux of my argument instead.

Second, Senator Carstairs claims that the inclusion of paragraph (e) of 718.2 would considerably attenuate the beneficial effects of the principles set out in clauses 3, 38 and 39 of Bill C-7. She stated as follows:

In addition, the bill requires the court to consider all reasonable alternatives to custody for young persons, including Aboriginal young persons, and if there is an alternative, the court is prohibited from imposing a custody sentence. This provision, I would argue, is strongly and significantly more effective than 718.2 of the Criminal Code, which, I repeat, says that they need only to "consider" the alternative.

Third, still according to Senator Carstairs, the presence of the expression "in custody" in the amendment is problematic, in that the bill would be referring to imprisonment, and this is a term used exclusively for adults.

She concludes by saying that the suggested amendment, drawn from the Criminal Code, is neither necessary nor appropriate for youth.

• (1700)

I am going to attempt to convince hon. senators that Senator Carstairs' arguments do not apply in the least to Bill C-7 or to Senator Moore's amendment. On the contrary, this Chamber ought to ensure that youth justice, when applied to young aboriginal offenders, respects the specifics of their community. This amendment is necessary in order to respond to the requirements of young aboriginal offenders.

There are a number of different expressions in Bill C-7. Let us not dwell on that. Our criminal law contains many expressions, for instance parole and determination of sentence, which are both in the Criminal Code.

There are three other factors in favour of adoption of the amendment. We all addressed them, as did the witnesses. Aboriginal youth are overrepresented in the youth criminal justice system. I am not going to revisit those statistics. We all agree they are alarming. They are overrepresented.

In its present form, Bill C-7 does not take the specific needs of aboriginal young offenders into consideration. This we heard in the representations by the Congress of Aboriginal People, the Aboriginal Legal Services of Toronto, and the Federation of Saskatchewan Indian Nations. All of these told us that, as it stood, Bill C-7 did not take the specific needs and rights of aboriginal youth into sufficient consideration.

The principles set forth in Bill C-7 and defended by Senator Carstairs are complex and too vague. They risk excluding consideration of the needs of young native people in favour of the other principles contained in clauses 38 and 39 with respect to sentencing.

The three groups of witnesses that appeared all tried in different ways, but with single purpose, to show the importance of including in the body of the bill reference to the nature of delinquency in native communities.

Why is there a need to add a paragraph (e) to section 718.2 of the Criminal Code in Bill C-7? Clause 140 of the bill provides that the Criminal Code applies in respect of offences alleged to have been committed by young persons, unless they are inconsistent with or excluded by it. In addition, clause 50 provides that a judge may refer to certain provisions of the Criminal Code in sentencing.

The amendment would allow the youth criminal justice system to determine sentences more appropriate to the particular needs of native peoples.

I will now put before you a basic element that Senator Carstairs cleverly avoided mentioning to us. You will recall, honourable senators, that we were asked a few years ago to amend the Criminal Code by introducing paragraph 718.2(e). We did so. It was a simple matter. Judges must be sure to give consideration to the particular circumstances of native communities. In 1999, our recently adopted amendment of the Criminal Code was interpreted by the Supreme Court of Canada.

The Government of Canada and the Government of Alberta had submitted to the Supreme Court essentially the same arguments as those made earlier by Senator Carstairs. In short, paragraph 718.2(e) simply indicates to the judge that all available sanctions other than imprisonment are to be considered regardless of whether the accused is a native person or not. Second, it represents only one codification of existing principles and of the jurisprudence on sentencing, more particularly of native peoples. You will be surprised to learn that the Court did not accept these arguments. The Supreme Court indicated very clearly that Parliament's passage of this paragraph was intended to resolve the problem of the over-incarceration of native peoples in the adult prison system.

I am going to cite two judges, who gave the majority decision, Mr. Justice Cory and Mr. Justice Iacobucci, at point 48, and I quote:

It can be seen, therefore, that the government position when Bill C-41 was under consideration was that the new Part XXIII was to be remedial in nature. The proposed enactment was directed, in particular, at reducing the use of prison as a sanction, at expanding the use of restorative justice principles in sentencing, and at engaging in both of these objectives with a sensitivity to aboriginal community justice initiatives when sentencing aboriginal offenders.

The court cited many studies and statistics to illustrate the unacceptable situation in which aboriginals find themselves with respect to the adult justice system, in order to show that the tradition principles on which sentencing is based — deterrence, denunciation, rehabilitation and the protection of society — were not enough to take into account the particular needs of aboriginals.

On page 64 of the decision, Justices Cory and Iacobucci say, and I quote:

The provision may properly be seen as Parliament's direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the

extent that a remedy is possible through the sentencing process.

The courts can improve the situation of aboriginals in the legal system by applying paragraph (e) of section 718.2, using the framework of analysis set out by the Court in *R. v. Gladue*.

This framework of analysis must include systemic and background factors which explain why aboriginal offenders often appear before the courts — poverty, level of education, drug or alcohol abuse, moving off a reserve, unemployment, domestic violence, and direct or indirect discrimination.

The framework of analysis set out by the Court includes the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his particular aboriginal heritage or connection.

In the course of this exercise, the courts will focus on the individual and on his particular needs, on a case-by-case basis therefore, bearing in mind that there is no one criterion to simplify the judge's task. When facing such a situation, the courts must look much more specifically at the needs of the individual.

In summary, the Supreme Court, following an exhaustive analysis of the provision we adopted, has ruled that paragraph (e) of section 718.2 constitutes a social protection measure which is justified under paragraph 2 of section 15 of the Constitution Act, 1982.

Second, it applies to all aboriginal people without exception, whether they live on- or off-reserve. Third, it does not call for automatic reduction of a sentence. Fourth, it does not afford aboriginal offenders more favourable treatment than non-aboriginal ones as far as sentencing is concerned, because the principles—

• (1710)

The Hon. the Speaker: I am sorry, Senator Nolin, but your speaking time is up. Do you wish to seek leave to continue?

Senator Nolin: Yes, Your Honour.

The Hon. the Speaker: Is that agreed, honourable senators?

Hon. Senators: Agreed.

Senator Nolin: Interpretation of the principles underlying Bill C-7, in particular those relating to sentencing, might take years. Some of the witnesses, including those I have already mentioned, will take the first available opportunity to make use of the Charter, and the section to which I have referred, 15.2, to say that not having included section 718.2(e) in the bill is contrary to aboriginal rights. You can guess what the Supreme Court will say; one has only to read *Gladue*.

Honourable senators, this is why Senator Moore was right in inviting us to amend Bill C-7 so that this provision of the Criminal Code is included, in order to ensure that the analytical framework used by the Supreme Court in *R. v. Gladue* will be applied to young aboriginal offenders.

[English]

Hon. A. Raynell Andreychuk: Honourable senators, I rise to speak to Senator Moore's amendment. I want to pay particular gratitude to him for his persistence on this issue. Too often in this place do we have to be prodded to raise issues concerning Aboriginal youth. It is noble that Senator Moore consistently brings these issues forward, despite the difficulties and the pressures that some of us feel from time to time.

We have already heard from Senator Nolin, Senator Moore and others that some provisions of the criminal youth justice bill raise serious Charter issues. It has already been pointed out that adult Aboriginal offenders could benefit to a greater degree from alternatives to incarceration under the Criminal Code than young Aboriginal offenders would under Bill C-7. Thus, there could be a violation of section 15 of the Canadian Charter of Rights and Freedoms which prohibits discrimination based on age.

The courts, communities and Aboriginal leaders have all said that the justice system simply does not fit Aboriginals and that this issue needs to be addressed. Parliament in its wisdom felt it was necessary to respond to these concerns and passed an amendment to the Criminal Code to at least begin to recognize that the general sentencing provisions are not sufficient to deal with Aboriginal offenders. A specific provision was inserted in the Criminal Code to draw everyone's attention to the fact that, at the time of the sentence, special consideration should be given to Aboriginal offenders. Surely young Aboriginals deserve the same treatment in this bill.

While there is a passing reference to Aboriginal youth in the general principles of sentencing, when it comes to the specific principles embodied in clause 38 of part 4 of Bill C-7, there is absolutely no mention of Aboriginal youth, Aboriginal circumstances, Aboriginal condition, nor is there any word identifying the unique and particular dilemma in which Aboriginal youths find themselves.

I need not belabour the point. Witnesses who appeared before the committee, including the Minister of Justice from Saskatchewan, the Minister of Justice from Manitoba and the Federation of Saskatchewan Indian Nations, continually noted that Bill C-7 does not address the particular problem of Aboriginal youth. Senator Moore's amendment, which puts emphasis on Aboriginal youth at the point of sentencing, at least begins to redress this wrong.

I claim that the provisions of Bill C-7 that relate to young Aboriginal offenders also offends sections of the United Nations Convention on the Rights of the Child. Fundamental precepts in

statutory interpretation indicate that, when interpreting legal instruments, generic statutory language must cede the way to specific statutory language. The United Nations convention maintains clear dispositions underlying obligations owed to vulnerable elements of youth populations much more so than does Bill C-7.

Clause 3(c)(iv) of the bill states that the measures taken against young persons who commit offences should respond to the needs of Aboriginal young persons. The Convention on the Rights of the Child specifies that children living in exceptionally difficult conditions need special consideration. As anyone who has lived in or visited some of Canada's native Indian reservations or who has visited native inner city neighbourhoods can attest, there are Aboriginal children in this country who are living in desperately difficult conditions and who need special consideration, including those young people who are in trouble with the law.

A single sentence stating that measures taken against young people should respond to the needs of Aboriginal children hardly responds to the exceptionally difficult conditions in which so many Aboriginal children live. We owe the new generation of Aboriginal youth much more than cursory lip service in the preamble and overall principles in dealing with the pressing demands of Aboriginal youth justice. They need some specific attention.

The convention also recognizes the importance of the traditions and cultural values of each group of people in the protection and harmonious development of the child. Canadian Aboriginal communities employ such methods as healing circles in order to dispense native justice. The incarceration of young Aboriginal offenders as a rehabilitative process is proving to be a failure. Clause 3(c)(iv) of Bill C-7 does not provide clear language to state that all alternatives to incarceration that are reasonable in the circumstances should be considered when dealing with Aboriginal youth caught up in the youth justice system.

Article 30 of the Convention on the Rights of the Child states that indigenous children shall not be denied the right to enjoy their own culture. This represents an important element in the consideration of Aboriginal youth justice. The article underlines a core value of Canadian society and the respect for the community. We have adopted laws, developed case law and built institutions that support this fundamental value. Article 40 of the convention affirms that every child accused or found guilty of having broken the law is to be treated in a manner consistent with the promotion of the child's sense of dignity and worth. In order to promote a child's sense of dignity and worth in the context of youth justice, there must be recognition of the child's own cultural background as recognized in Article 30. Without such recognition, the child will be stripped of his or her entire identity, thus rendering the imposition of any given sentence with little or no meaning for the young Aboriginal offender.

• (1720)

The importance that Senator Moore's proposed amendment represents in filling the void of the present bill in respect of youth justice for aboriginals cannot be ignored. If Canada is truly to live up to the commitments that it made to the international community as well as to some of the most vulnerable youth in Canada when it ratified the United Nations Convention on the Rights of the Child, we must provide and be more elaborate in our provisions for Aboriginal young offenders than is presently in Bill C-7.

Honourable senators, I spent some 10 years consistently in the court system and two years part-time in the court system. About 80 per cent of my caseload was related to Aboriginal youth, when the Aboriginal community made up only 20 per cent of the population. Each day, I was confronted with Aboriginal youth with whom I had to deal under existing sections. Those sections did not fit Aboriginal youth. For example, we were asked to bring parents to court, and yet often parents were not the caregivers. There was a community response to caring for children. I point out that there are many more examples, but more often than not, the frustration came when alternative measures, if they were ever available, were simply not the kind that fit Aboriginal youth.

It is necessary that judges, caseworkers, the police, probation officers and all those in the justice system put their minds to the needs of Aboriginal youth and their condition before sentencing. The sentencing of Aboriginal youth in Canada has continued and will continue, in my respectful submission, to lead to incarceration if we do not take some dramatic steps.

Senator Moore has had the courage to stick to this amendment and to put the onus on all of those in the justice system to bear in mind throughout the process the needs the Aboriginal child. More particularly, when we come to that point — that is, when we have exhausted everything else and we are about to put an Aboriginal youth into custody — we must be mindful of who that young person is and what their particular needs are. Surely, if society and we in this chamber have come to the conclusion that Aboriginal adults need this attention and if we are to succeed in building a fair and just society, do our Aboriginal youth need less? If we do not pass this amendment, we not only fail the United Nations Convention on the Rights of the Child but also, and more importantly, the Aboriginal youth in this community whom we hold so dear — a community that we say is just and a community about which we have heard Aboriginal senators in this forum say that the justice system does not fit. Here is one measure that will start making the justice system fit Aboriginal youth.

Honourable senators, we cannot turn our backs on this amendment or on our Aboriginal youth.

The Hon. the Speaker: Is the house ready for the question on the motion in amendment?

Hon. Senators: Question!

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, that this bill be read the third time.

In amendment, it was moved by the Honourable Senator Moore, seconded by the Honourable Senator Watt, that the bill be not now read the third time but that it be amended —

Senator Carstairs: Dispense!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: There is uncertainty. Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: Honourable senators, I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Hon. Terry Stratton: Honourable senators, I should like to defer the vote until tomorrow.

The Hon. the Speaker: The Honourable Senator Stratton is asking that the vote be deferred until 5:30 p.m. tomorrow, according to the rules.

Senator Stratton: If I may, Your Honour, I believe there is agreement for a vote at three o'clock tomorrow, with a 15-minute bell.

Hon. Bill Rompkey: That is agreed, honourable senators.

The Hon. the Speaker: By agreement, then, the vote will not be at 5:30 p.m. but, rather, at 3:30 p.m. tomorrow afternoon and the bells will begin ringing at 2:45 p.m.

We have agreement between the government and the opposition, but let me put the question to the whole chamber. Is it agreed, honourable senators, that the vote will be at three o'clock tomorrow on the motion in amendment of the Honourable Senator Moore on Bill C-7?

Hon. Senators: Agreed.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—MESSAGE FROM COMMONS—
MOTION TO CONCUR IN AMENDMENT ADOPTED

The Senate proceeded to consideration of the amendment by the House of Commons to Bill S-10, to amend the Parliament of Canada Act (Parliamentary Poet Laureate):

1. Page 1, Clause 1

(a) replace, in the English version, lines 7 to 9 on page 1 with the following:

“75.1 (1) There is hereby established the position of Parliamentary Poet Laureate, the holder of which is an officer of the Library of Parliament”

(b) replace lines 20 to 30 on page 1, and line 1 on page 2, with the following:

“(3) The Parliamentary Poet Laureate holds office for a term not exceeding two years, at the pleasure of the Speaker of the Senate and the Speaker of the House of Commons acting together.

(4) The Parliamentary Poet Laureate may”.—(*Honourable Senator Grafstein*).

Hon. Jeremiah S. Grafstein: Honourable senators, I move, seconded by the Honourable Senator Fairbairn:

That the Senate concur in the amendment made by the House of Commons to this bill without amendment; and

That a message be sent to the House of Commons to acquaint that House accordingly.

Honourable senators, in the beginning was the word, and we are told that the world will end with an awesome poem. Poetry is no more and no less than truth. Truth is evoked through the creative turmoil of each poet. The Parliamentary Poet Laureate bill is dedicated both to the hard and the soft light of truth, radiated by the words of each poet. In time, I am convinced that a verbal tapestry of poetic rays about Canada and the world will arise through the successive words of parliamentary poet laureates. The language used by the Poet Laureate will mark the official version of each poem. Translated in French and English, thus unofficial versions will be made immediately available in both official languages. In time, these poems will be stitched together to present a much different perspective of Canada.

• (1730)

Honourable senators, there is already some misconception abroad about the role of the Parliamentary Poet Laureate. It is not

a government appointment; it is a parliamentary appointment for a two-year term, made by the Speakers of both the Senate and the Commons, as an officer of the Library of Parliament. He or she has no mandatory duties and responsibilities under this bill. I concur with the amendment agreed to in committee in the other place which clarifies the minimalist duties of the Parliamentary Poet Laureate. The poet laureate may simply write poems when he or she chooses. The role of the Parliamentary Poet Laureate is to write poems, and to have no other official duties, unless he or she decides. Silence will be equally eloquent, if the poet laureate chooses to remain silent.

Honourable senators, may I thank our colleagues in the other place, Marlene Jennings and, latterly, Yolande Thibeault, who so brilliantly steered the bill through the Commons debates and the committees meetings which, at times, were distractive, turbulent, sarcastic and which, at times, rose to eloquence.

Of course, my appreciation goes to Mark Audcent, Law Clerk and Parliamentary Counsel to the Senate, who so elegantly and gracefully helped to craft this bill, as he has done so often in the past.

Finally, I would thank all honourable senators, especially those on the committee, who not only encouraged but also unanimously endorsed this bill and helped cleared the path for my modest millennium project to move forward toward reality. Hopefully, all Senate colleagues will have added more than a footnote to the glorious history and the sparkling refractive diversity of the culture of our Canada.

Honourable senators, a poem reflects just one poet's reflection of his inner vision, one poet's prism of his or her world; and, if we are fortunate, that poem may enlighten and elevate all of us.

Hon. Lowell Murray: Honourable senators, I am sure there is a ready answer to this question, but why is it that the House of Commons has added or changed something in the French version which is not found in the English version, at least as it appears in the *Order Paper* and *Notice Paper*?

Senator Grafstein: Honourable senators, I have not read the French version. I have just been following the English version.

Senator Murray: Perhaps the Table understands it. I do not have the bill before me. What I have is the amendment by the House of Commons to Bill S-10. I read in the left-hand column, which is the English column:

(a) replace, in the English version, lines 7 to 9 on page 1 with the following:

That is fine. The French version has the same change. It states in French, but not in English:

(4) Le poète officiel du Parlement peut:

a) rédiger des oeuvres de poésie, notamment aux fins des cérémonies officielles du Parlement;

There are also subparagraphs *b)*, *c)* and *d)*. However, those words are not found in English. I presume there were some corrections to the French version but not to the English version.

Senator Grafstein: I thank the honourable senator for bringing that to our attention. The English version was not changed, but the drafters in the other place felt that the French translation of the English words would be more appropriately redrafted. It did not change in any way, shape or form the substance of the amendment. It is a much more elegant form. I commend the honourable senator on the other side for drawing that to my attention.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Grafstein:

That the Senate concur in the amendment made by the House of Commons to this bill without amendment; and

That a message be sent to the House of Commons to acquaint the House accordingly.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

PRIVACY RIGHTS CHARTER BILL

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill S-21, to guarantee the human right to privacy.—(Subject-matter referred to the Standing Senate Committee on Social Affairs, Science and Technology on April 26, 2001).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, Order No. 5, a motion by Senator Finestone, seconded by Senator Rompkey, deals with a bill to guarantee the human right to privacy. A decision was taken on April 26, 2001, that the subject matter of that bill be referred to the Standing Senate Committee on Social Affairs, Science and Technology.

This side would like to have a report on the status of that bill for a number of reasons, one of which is as a courtesy to Senator

Finestone who, unfortunately, may be with us for only another couple of weeks. I

Is it the intent of the Standing Senate Committee on Social Affairs, Science and Technology to schedule this item for study? The Social Affairs Committee has been seized of the matter. Unfortunately, Senator Kirby, who is the chair of the committee, is not here. However, perhaps the Leader of the Government might respond to my concerns.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is my understanding that the committee has apprised itself of the subject matter of this bill and will, in very short order, be prepared to present a report to this chamber on its study of the subject matter of the bill.

Senator Kinsella: I thank the Leader of the Government for her response.

Order stands.

LOUIS RIEL BILL

SECOND READING—DEBATE ADJOURNED

Hon. Thelma J. Chalifoux: moved the second reading of Bill S-35, to honour Louis Riel and the Métis People

She said: Honourable senators, I rise this day to speak to Bill S-35, an act that honours Louis Riel as a Métis patriot and Canadian hero, and to acknowledge the Métis people.

It is a great honour and privilege to speak today to this bill. I will do my best to tell honourable senators what it means to me. Mr. Guy Freedman, a Métis writer from Manitoba, has assisted me greatly in this story of our Canadian hero. It is ironic that, 116 years ago today, the Métis people and Riel's family gathered in St. Boniface, Manitoba, to honour this great man and lay him to rest at a funeral attended by members of his family and hundreds of his supporters.

Most Métis — in fact most Canadians — know a great deal about Louis Riel. More has been written about him than Sir John A. Macdonald; but what is written is largely controversial. Pretty much everyone has his own opinion. Was he insane? Was he a hero and a prophet? Just who was he? One thing is for sure: He was the leader of the Métis people at a time when all hell was breaking loose out West. History shows that he was truly a remarkable man.

• (1740)

Riel came into this world on October 22, 1844, at Red River Settlement, on a particularly beautiful sunny morning, according to his mother. Forty-one short years later, Manitoba's Father of Confederation was hanged from the neck until dead, at the gallows in Regina.

Like other great people the world has known and those who were taken from us too soon — Martin Luther King comes to mind — we remember them on the day of their death.

This, of course, is a political statement, and if one thing can be said about us Métis, we are political to the teeth.

To help us put things in perspective, allow me to tell you about the funeral arrangements following the execution of our great Métis leader, Louis Riel. Many people openly protested his hanging, yet protests and appeals, from government leaders to the people of the western plains, had no effect on the government of the day. To the people of the western plains and all the descendants, Louis Riel represented a fair and just society, an inclusive society, a new nation that could take its rightful place in Canada's future.

Riel's body was eventually returned to his family by train. His funeral cortege was a mile long, and hundreds of people packed the church, with as many waiting outside in December's cold in St. Boniface, Manitoba, his beloved home. In contrast to many funerals for leaders and fighters for the rights and fair treatment for the masses, Riel had a hood on his head and a noose around his neck. Father Alexis André, his priest who had double-crossed him, was by his side on the gallows. Father André was crying openly, and it was a very erect, very calm Riel who whispered to him, "Courage, Father."

At Riel's very public hanging, the clergy began to recite The Lord's Prayer, and before the prayer was finished, the trap door suddenly snapped open. The rope jerked, swayed back and forth violently, and then came to a dead stop.

It took almost one month before Riel's body was taken back to his beloved home by train. There was reason to believe it would be tampered with. Let me tell you the real story.

Riel's body was interred in a shallow grave beneath the floor of the church while the son of a local Regina French Canadian businessman and Riel supporter kept armed vigil by it for many days. There was no open attempt made, but at night there were footsteps in the darkness and faces peering in the windows.

At last, when feelings seemed to have died down, Governor Dewdney informed Mr. Bonneau that on a certain night a boxcar would be left on the Albert Street siding to convey the body to Winnipeg. Young Bonneau dug up Riel's frozen body and, taking it in his arms, stumbled through the snowdrifts in Victoria Park, confined it in a box and loaded it on the boxcar. Bonneau accompanied the body to Winnipeg, where he delivered it to Riel's friends and relatives.

Young men like Bonneau are a part of what we all are all about. Even though not Métis, he was no doubt a follower of Riel's vision of what Métis are still fighting for — self-government and a land base. We still have friends like Bonneau.

Riel accomplished in death what he could not do in life. He united the Métis people. I believe his gruesome hanging and the

subsequent mistreatment of Métis people across the homeland made all Métis people understand what he was fighting for and what all Métis people were up against.

When the government of the day executed Louis Riel, they effectively executed a whole nation of people. We were denied the right to speak our language. We were not allowed to hold public meetings. We had no voice. Our organized government structures were destroyed. However, government orders could not take away the dreams and visions that Louis Riel had instilled in the people of the West and in the people in Quebec, who were struggling to retain their own cultural identity, which is very similar to ours as Métis, and yet be a part of the new Canada.

Riel was our hopes and our dreams of what Canada could be from coast to coast to coast. Under the leadership of Louis Riel, and before Canada acquired jurisdiction over Rupert's Land and the territory known as the Red River, he established a provisional government based on the principles of tolerance and equality of representation between the Métis majority, the French, the English, and the First Nations. This government elected Louis Riel as its president and drafted and unanimously adopted a list of rights for the governance of this territory. This list of rights was accepted by the Government of Canada as the basis for the entry of the territory into Canadian Confederation and for the passage of the Manitoba Act. Manitoba became the fifth province to join Confederation and the first province of Western Canada. The name "Manitoba" was submitted by Louis Riel and chosen by the Canadian Parliament; hence, Louis Riel is recognized as the founder of Manitoba.

Louis Riel was elected three times to the House of Commons: October 13, 1878; January 13, 1874; and September 3, 1874. However, as a result of political pressure, he was never allowed to take his seat.

I can see all of these events as the beginning of the western alienation that carries on to this day. The people of the territories had become increasingly concerned about the lack of respect and their rights as Canadian citizens. Does all this sound familiar, even in this day and age?

The people looked to Riel's leadership to assist them in defending their homes, their families, and their lands.

In March 1982, the House of Commons and the Senate of Canada unanimously adopted resolutions recognizing the various and significant contributions of Louis Riel to Canada and to the Métis people, in particular, recognizing his unique and historic role as the founder of Manitoba. In May 1992, the Legislative Assembly of the Province of Manitoba unanimously passed a resolution recognizing the unique and historic role of Louis Riel as a founder of Manitoba and his contribution in the development of the Canadian Confederation.

• (1750)

Why should the arrowhead sash be the recognized symbol? Our Métis priest, Father Guy Lavallée, gave an opening prayer at the First People's Constitutional Conference in Ottawa on March 14, 1992. His words are so profound as to why the sash should be our symbol that I would like to say the words that he prayed for us:

I would therefore like to end my prayer, God, on a theme that I started out with at the beginning, namely, a Métis symbol. Let's take a minute and look at the sash. There are other Métis symbols such as our flag, the fiddle and the famous Red River jig.

Métis people, God, have been wearing the sash proudly for many years. When I look at it, I notice that it is composed of many interconnected threads. Many strands, many patterns, many colours contribute to the overall design of the sash.

Our Métis culture, God, is like the sash. The lives of the Métis have been woven together from a variety of cultures, languages, traditions and beliefs. For example, God, we are the descendents of the English, of the French, of the Indians — Cree and Ojibway — and Scots to name a few. We speak a variety of languages: English, Canadian French, Michif French, Michif Cree and Mashkégon.

Look at the sash. It is a composite. It is a mixture. It is Métis. It is made up of a variety of elements, like the lives of the Métis. Look at its patterns, its fabrics, its colours. Nonetheless, these disparate elements form an integrated whole. Similarly, the different ethnic backgrounds and different languages of the Métis all blend into one another to form a rich tapestry like the lives and culture of the Métis.

God, this multi-cultural nature of our identity is what makes us unique, is what makes us Métis. In many ways, God, I think we represent what Canada should be as a unified country.

God, we, your Métis people, recognize our uniqueness before you here today.

At this moment, God, we do not have any fancy ritual to perform for you, nor did we bring any special present to offer you. However, what we do have to offer you, God, is ourselves, our lives, the Métis Nation of Canada, with its history, its pains, its joys and its dreams.

It is in the same spirit of our forefathers at Red River in 1870 and in Batoche in 1885 that we commit and dedicate ourselves to build a truly unified Canada from sea to sea, no less than what Louis Riel and Gabriel Dumont would have wanted if they were alive with us here today.

Amen.

I now urge all of my colleagues to support Bill S-35, as Canada truly does have wonderful, dedicated heroes.

Hon. Senators: Hear, hear!

Hon. Gerry St. Germain: Honourable senators, as a Manitoba Métis, I should like to ask for the opportunity to adjourn the debate on Bill S-35 so that we could speak to this in the future. Bill S-35 is important, and as much as I see partisanship rearing its head on the other side, I am hopeful that it does not exist in respect of this bill.

I compliment Senator Chalifoux on this, and if it please the house I should like to move adjournment of debate.

The Hon. the Speaker: That is in the form of a question to Senator Chalifoux, at least in the first instance.

Senator Chalifoux: Honourable senators, before Senator St. Germain adjourns the debate, I wish to inform all of my colleagues that there is absolutely no partisanship. We are here as Canadians, and we have to really look at who we are as Canadians — no partisanship.

Hon. Senators: Hear, hear!

Hon. Terry Stratton: Honourable senators, as a Manitoban who currently lives about half a mile south of where the burial took place, I am familiar with the history of Louis Riel. I am hopeful that the entire story will be told as we progress through this bill. There was such a problem because of the execution of Thomas Scott, the Orangeman. That story needs to be told as well, on balance, to create an understanding of why these events transpired later. It is a fascinating story.

Although Riel wanted to become independent, I do not think Canadians realize how close Manitoba came to becoming a part of the United States. It was the influx of Orangemen into Manitoba at that time that prevented that from happening. That is the side of the story that should be told as well.

Senator Chalifoux: There are two sides.

Senator Stratton: That is why I ask the question. Can we be assured that both sides of the story are told? In consideration of my historic roots, I should like to ensure that that takes place.

Senator Chalifoux: Yes, I, too, should like to make it clear, because it is our side of the story that should also be told. There are some interesting facts that were not told, because it was the non-Aboriginal reporters who chose to tell the story. I am hopeful that, in this debate, the entire story will be told.

Senator Stratton: I agree that this is an important debate for Manitoba and the Métis. Yes, Senator Chalifoux is absolutely right: White folks told the story and the Métis did not have the opportunity to tell the story. I want to ensure that there is a balance, and Senator Chalifoux has assured me of that.

This debate would then lead to forgiveness by the Métis of the Prime Minister of the day. Is that possible?

Senator Chalifoux: The debate will rage on. Senator Stratton, because, in my opinion, what happened in history, happened. In those days, bigotry and racism was very much a part of everyday life. We must look beyond that and realize the contributions that our leaders have made. Riel was one of our leaders. In the debate, the true story will be told.

The Hon. the Speaker: If senators wish to ask Senator Chalifoux questions, please proceed.

Hon. Laurier L. LaPierre: Is Senator Chalifoux aware of the racism that existed for the condemnation of Louis Riel? He was told by Sir John A. Macdonald that he would hang, even if every dog in Quebec barked. Consequently, I believe that Senator Chalifoux is doing a great favour by raising this issue for debate.

Was the honourable senator aware that at the beginning of the debate, some time ago, I was opposed to the pardon of Louis Riel? However, since I have met Senator Chalifoux, it is with great honour that I shall support it.

On motion of Senator St. Germain, debate adjourned.

FOREIGN AFFAIRS

BUDGET—STUDY ON ISSUES RELATED TO FOREIGN RELATIONS— REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eighth report of the Standing Senate Committee on Foreign Affairs (budget—release of additional funds (study relating to foreign relations generally)) presented in the Senate on December 4, 2001.—(*Honourable Senator Stollery*).

Hon. Peter A. Stollery moved adoption of the report.

Motion agreed to and report adopted.

BUDGET—STUDY ON THE EUROPEAN UNION— REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the ninth report of the Standing Senate Committee on Foreign Affairs (budget—release of additional funds (study on the European Union)) presented in the Senate on December 4, 2001.—(*Honourable Senator Stollery*).

Hon. Peter A. Stollery moved adoption of the report.

Motion agreed to and report adopted.

AGRICULTURE AND FORESTRY

BUDGET—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on Agriculture and Forestry

(budget—release of additional funds) presented in the Senate on December 4, 2001.—(*Honourable Senator Gustafson*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition), for Senator Gustafson, moved adoption of the report.

Motion agreed to and report adopted.

• (1800)

FISHERIES

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES AND TRAVEL—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Fisheries (budget—release of additional funds) presented in the Senate on December 4, 2001.—(*Honourable Senator Comeau*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition), for Senator Comeau, moved the adoption of the report.

Motion agreed to and report adopted.

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

SEVENTH REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Callbeck, for the adoption of the seventh report of the Standing Committee on Rules, Procedures and the Rights of Parliament (official third party recognition) presented in the Senate on November 6, 2001.—(*Honourable Senator St. Germain, P.C.*).

Hon. Gerry St. Germain: Honourable senators, I wish to take the opportunity to thank my B.C. colleague Senator Austin, his committee and his researchers for their work on the issue we are discussing here tonight. I should also like to thank the entire chamber for entertaining my motion and agreeing that some rules governing recognition of other parties are necessary and may become moreso in the future. The open-mindedness of honourable senators is appreciated.

Regardless of the effort and goodwill, I must admit to being disappointed with the outcome for a number of reasons, some personal and some partisan. Most significantly, I am disappointed because this chamber has once again revealed its unwillingness to adapt and change in the interests of all Canadians. I am referring to Western alienation, which was mentioned in the last speech.

The Hon. the Speaker: Honourable senators, it is my duty to call attention to the fact that it is now six o'clock. Is it agreed that we not see the clock?

Hon. Senators: Agreed.

Senator St. Germain: Honourable senators, there is a fallacious notion in this chamber that somehow we can and do represent the diversity that exists in this country. Let me burst the bubble — we do not and cannot until we reflect the democratic will of the entire country. Today, some 45 per cent or almost half of Canadian voters are not properly represented in this chamber.

In my submission to the committee, I urged that the following principles be adopted in any resulting recommendations: first, that the right of the majority to govern not be undermined; second, that the voices of the minority groups be fully and equitably heard; and, third, that there be some recognition that political parties are part of the reality of this place.

I never expected the committee to have problems with the first principle. However, I am surprised at the degree to which the committee struggled with the second and third principles. Why is so it hard for the chamber to recognize that the world is changing and that it must be willing to accommodate some of that change? This is particularly confusing when our own precedent speaks to such change.

On the specific recommendations of the committee, let me point out that setting the minimum requirement at five senators, as opposed to four, discriminates against one province — Prince Edward Island. It is the only province incapable of forming a provincial block. While I cannot presently contemplate such a situation, that does not diminish the fact that this rule is discriminatory.

Furthermore, on the point of the number required to form a group, a caucus, I believe the Supreme Court has ruled that a party can consist of as few as two persons. It has also been said in the corridors of Parliament that a party caucus need only have a leader, a whip and possibly one other person.

Using the criteria of Elections Canada for the recognition of political parties is also regionally discriminatory. Only Ontario and Quebec have more than 50 seats, and therefore only those two provinces will be given the ability to have regional caucuses. Under the proposed rules, for example, the Bloc Québécois could have a Senate caucus but a similar party from New Brunswick or Manitoba could not. Party qualifications should not be based on seats, which is regionally discriminatory, but rather on popular vote. This is the procedure used in Germany, France and other democracies.

There was no discussion on the relevant question regarding the appointment of leaders of opposition parties. As I recall, there was considerable dispute as to the precedents. Are Senate

opposition leaders appointed by their caucus or by their leader in the other place, as is the Leader of the Government in the Senate?

The Speaker should be given the authority to determine whether a group qualifies for party status and should be in a position to arbitrate disputes on such matters. Such a role is afforded the Speakers of both places in the British Parliament. By providing the Speaker with this role, the tyranny of the majority to erode the rights of smaller caucuses would be diminished. A future Senate would then not be able to arbitrarily remove or change rules on party status.

Finally, I am concerned that nothing in the committee report refers to conversations between the officers of this place and the officers of the House of Lords. We know inquiries did take place. What opinions were given? Why is this chamber not privy to the results of those inquiries? Should that information not form part of this report?

This is one of the most important aspects of my request. Regardless of these details, it appears that the committee is recommending that the Canadian Alliance, due to its limited representation in this chamber, be denied any additional resources to carry out its responsibilities. This approach is grounded neither in precedent nor in Canadian tradition. For example, in B.C., the recent election left the NDP with two seats out of a possible 77 seats. The minimum qualification for party status is four seats. The NDP has been denied official opposition status but is still recognized by the Speaker as the opposition, asks questions during Question Period and, as a gesture toward the democratic necessity of a healthy opposition, was given an annual budget of \$300,000.

In the 1980s, the NDP in Alberta normally elected only one or two MLAs to a Progressive Conservative-dominated legislature. The great Peter Lougheed and Don Getty governments also recognized the role and responsibilities of the small opposition, which often included only one caucus member — NDP leader Grant Notley. Also in the 1980s, former New Brunswick Premier Frank McKenna was faced with the dilemma of having no opposition in the legislature. Mr. McKenna, in his wisdom, recognized that some workable opposition was necessary and therefore provided resources to political parties that did not even hold elected office.

In Manitoba, after the 1994 election, when the Liberal caucus was reduced to less than the required four members to be granted official status, Mr. Filmon's government unofficially recognized the Liberal Party as the third opposition party. It provided at least two thirds of the financial resources normally only provided for status, recognized opposition parties, thereby enabling the members of the Liberal caucus to fulfil their functions and obligations to their minority group throughout the province. I know that the present leader in this place is fully aware of that precedent.

In a recent workshop on the role of the opposition, the Commonwealth Parliamentary Association stressed that not only did the opposition have a crucial role to play in a parliamentary democracy but also that full access to resources was crucial if the opposition was to perform its functions effectively. Clearly, most Canadian legislative assemblies have realized that it is their obligation to jealously guard the rights of opposition minorities. They realized that to discount the voices of so many people, simply because of the quirks of our election system, is a dangerous path to blindly follow.

Honourable senators, when looking for direction on this issue, one other matter seems to have been entirely neglected – that is, the precedent set by the House of Lords in our mother Parliament. The authoritative work by Erskine May on British parliamentary practice states:

The official opposition party (by reference to the House of Commons) and the opposition party with the largest number of members in the Lords, other than the official opposition, are given financial assistance from public funds in respect of their parliamentary duties.

Other precedents that my researchers obtained from the Commonwealth and other democracies pointed in a similar direction; yet the recommendation before us has taken very little of the precedents into consideration. It is as if the Senate, simply because it has the right, prefers to operate in a vacuum.

I suggest that because this place can make its own rules, it behooves us to justify our actions even more than in the other place. If our rules are made without reference to precedent or without reference to the purpose of this chamber as envisioned by the Fathers of Confederation, then I believe we are making rules at whim. Whim is hardly the basis for decision making in a place that owes its existence to tradition and intent.

I should remind honourable senators that former Liberal Prime Minister Abbott, who was later appointed to the Senate, had the following to say upon his entry into this chamber on June 17, 1871:

I never despaired of the Senate; never thought there was any danger of its functions not being appreciated by the people, if it were only true to itself; and what we have to do now, as I think we are emerging from our state of transition, is to prove to the people that we possess powers equally important and exercise them in a manner equally beneficial to the country in our own departments to those that are possessed and exercised by other branches of the legislature in theirs.

• (1870)

Unfortunately, if Abbott were with us today, he truly would despair for this place. Our functions and our roles are not appreciated by the people, and we have failed to prove that we

[Senator St. Germain]

are willing to exercise our powers in a manner equally beneficial to the other branches of the legislature.

This place has some fundamental obligations, obligations that I fear are we are not able to live up to because of the barriers and constructs we have placed on the operation of this place. Because we are appointed, because we are not regionally representative and because we do not properly represent the political and cultural diversity, we have allowed this chamber to become emasculated.

I believe that Senator Kinsella, in his heart, recognizes this reality. He recently spoke in this place about the need to recognize and give voice to minorities, including not only minorities of race and colour, but also minorities of geography and creed. Senator Kinsella said:

As senators, one of the things that we are called upon to do is to take into consideration the interests of minorities in Canada. That is the purpose of this place. When you stand for the cause and you articulate the cause and you promote it and protect the rights of the minority, that is not popular. It will, particularly, not be popular in terms of the majority government of the day of whatever party.

A certain crisis of conscience is descending on us in this chamber, and history will be harsh with this generation of us who have the privilege to serve in this chamber if we do not, from time to time, respond to the constitutional obligation that the Fathers of Confederation defined for this chamber.

The honourable senator concluded his remarks by saying:

If we cannot respond as defenders of the minority...then perhaps the time has come to abolish this place. I believe this is that serious.

Thus, we diminish our importance to the Canadian system by serving the political masters of the other place. We are afraid to resolutely oppose or challenge the government because of our lack of democratic credentials and, by doing so, we diminish our relevance.

I fundamentally believe the Senate does have a role to play in our country. It does have a role as the protector of the regions and the minorities. We do have a role in challenging and questioning the government and its legislative agenda. We do have a role as a more thoughtful and deliberate body, but those roles can never be realized in today's environment. By refusing to reform ourselves, we relegate ourselves to obscurity and irrelevance.

The Senate, by its refusal to substantively change and thereby reassume its intended responsibilities, has indirectly contributed to many of the problems facing our nation. Our failure to be a voice for the regions and minorities has allowed the provinces to assume a role the Fathers of Confederation never intended. Would regional and linguistic protests manifest themselves in the House of Commons the way they have today if we were truly doing our job?

The Senate cannot work in a vacuum. We have an obligation to be more than we are now. We have to stop pretending we are relevant to the effective governance of this country, when increasingly we are not. However, the tragedy here is not our lack of relevance; the tragedy is that this chamber could contribute so much more, but is likely to decide otherwise.

Honourable senators, my intentions in raising the issue of party and status in this chamber have been twofold. First, I was seeking a greater role and greater resources for the party I represent, something we all have an obligation to do as part of the confrontational nature of our political system. I believe the Fathers of Confederation wanted an institution where regions and their reasoned political voices would be recognized and heard as equals, or at least seen as such. Second, I have been trying to raise the issue of Senate reform. In all my arguments and submissions I have attempted to show what other jurisdictions have accomplished.

Unfortunately, I must admit failure on both counts. This place will likely add some basic rules that it should have had in the first place. The fundamental questions raised have been glossed over to a degree. The issues of precedence have not been addressed and the fundamental role of this place regarding regional or minority representation was not discussed. It appears that this exercise has been a rather long one for the answers given.

In closing, honourable senators, a country and its public institutions, corporations and political bodies are often judged on how it treats its minorities. Rules of parliamentary practice must be written, but those rules should not be written so as to inhibit minority interests and regions — and mainly regions — from participating equally in our Canadian democracy. With all due respect, honourable senators, it appears that in dealing with this question the Senate is, to a degree, neglecting one of its basic tenets.

We may control our own destiny here in the Senate, honourable senators, but the privilege is paid for by those we represent — the taxpayers, the electorate the citizens of this country. I believe that democracy is being denied. Having said that, honourable senators, I rest my case.

Hon. Nicholas W. Taylor: Honourable senators, may I ask a question of Senator St. Germain?

The Hon. the Speaker *pro tempore*: I am sorry, but the time allocated to Senator St. Germain has expired.

Senator St. Germain: May I request leave for one question?

The Hon. the Speaker *pro tempore*: Is leave granted for one question?

Hon. Senators: Agreed.

Senator Taylor: The honourable senator built his case on proportional representation. When elected members of the House of Commons switch to another party or form a new party, they

must go back to the electorate at the next election to seek approval for their new political clothes. Senators, on the other hand, are appointed by the Prime Minister until the age of 75. Therefore, if we switch parties, we need not go back for approval to either the Prime Minister who appointed us or to the party that was in power at the time of our appointment.

Why is it that a senator who leaves the party he or she was appointed under should not have to resign?

Senator St. Germain: Honourable senators, I believe that I was appointed to represent a region, and I made my decision based on how I could best do that. With regard to whether I should resign, many senators have left the Liberal Party and sat as independents. They have not seen fit to resign. That is essentially the same as joining another party.

This debate could go on at length. Perhaps Senator Taylor and I should discuss this outside of the chamber. My argument is that regional representation is key. Senator Chalifoux talked about Western alienation. If we were really representing our regions, we would reflect that.

In the late 1930s, when the Labour Party became the official opposition in the House of Commons in Great Britain, the government of the day appointed members of that party to the House of Lords in order that it would be represented there. They took this action on their own. What we are looking at here is representation for the region. You know the region that we are from is not happy with the way we are operating. Why do you think there are Reform and Canadian Alliance seats? Not because they are in love with the policies and the way this government is operating. I hope that answers your question.

• (1820)

The Hon. the Speaker *pro tempore*: Is the house ready for the question? Order, please! Order, honourable senators!

Leave was granted for one question, honourable senators. If there are more questions, I must ask again for leave.

Is leave granted, honourable senators?

Some Hon. Senators: No.

On motion of Senator Corbin, debate adjourned.

BANKING, TRADE AND COMMERCE

BUDGET—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the twelfth report of the Standing Senate Committee on Banking, Trade and Commerce (budget—release of additional funds) presented in the Senate on December 5, 2001.—(*Honourable Senator Kolber*).

Hon. E. Leo Kolber moved the adoption of the report.

Motion agreed to and report adopted.

**LESSONS TO BE DRAWN FROM TRAGEDY
OF TERRORIST ATTACKS IN UNITED STATES
ON SEPTEMBER 11, 2001**

INQUIRY—DEBATE ADJOURNED

Hon. Pierre De Bané rose pursuant to notice of December 5, 2001:

That he will call the attention of the Senate to certain lessons to be drawn from the tragedy that occurred on September 11, 2001.

He said: Honourable senators, I wish to rise today to speak from both my head and my heart. In particular, I should like to share my reflections about some long-term lessons for Canada arising out of the tragic events of September 11, 2001.

In the immediate aftermath of such a horrible catastrophe, it is natural that people everywhere should react with shock, anger and sadness. It is natural, too, that governments should move quickly after such events to address and take action on the most pressing initiatives that seem appropriate. They have an obligation to ensure order and safety for the public, justice for the victims and retribution to the misguided extremists who are responsible for it.

However, as the weeks pass, we are gradually able to rise above the immediate challenges and responses of the crisis and we can begin to take a longer view of the situation. Indeed, I believe that taking a long view and encouraging careful thinking beyond the immediate pressures of the day is a responsibility that we, as senators, must take seriously, because we are placed in a special position. We are freer than elected parliamentarians to focus on Canadian long-term needs and interests.

For these reasons, I suggest we can and must begin to take a long-term perspective to think about the lessons Canada should learn as a result of September 11, so that we can leave a legacy of peace and security to our children and our grandchildren.

I think honourable senators will agree that our founders showed remarkable wisdom when they defined the words "peace, order and good government" as the core values of our Constitution. When times are peaceful and the economy is booming, those words lack the élan of their counterpart terms in the American Constitution, which speaks of life, liberty and the pursuit of happiness.

However, in times of national stress and uncertainty, it does not take long before we discover that "peace, order and good government" are the very preconditions for any society whose citizens have power to enjoy life, liberty and happiness. Conversely, it is clear that life, liberty and happiness do not necessarily guarantee peace, order and good government.

The first question we must ask ourselves when we adopt a long-term perspective about the events of September 11 is

whether or not they were truly watershed in world history. Were the events of September 11 so momentous that they will change fundamentally the future course of human events? This is an important question because, obviously, the more profound the changes brought about by September 11, the more profound our reactions must be. One only has to look, for example, at the recent history of Lebanon, Congo, Spain, Israel, Palestine and the United Kingdom, to mention only a few, to see, in the words of Hannah Arendt, "the banality of evil" — that is, to see how ordinary and seemingly "normal" violence can appear when it occurs in so many parts of the world.

In my experience, the inhumanity of man to man may be forgiven, but it is never forgotten. It changes the world when it happens, usually for the worse, and peace and order will not prevail unless a way is found to heal the wounds and avert a further cycle of vicious conflict.

Honourable senators, it would take me more time than I have to discuss the many dimensions of the historical change through which we are living. I intend to focus on three important lessons for Canada in the tragic events of September 11: one at the international level, one at the domestic level, and one at the level of the people, of day-to-day Canadians across this wonderful country of which we are privileged to be citizens.

[Translation]

At the international level, I think that the big lesson of September 11 for Canada is that the world more than ever needs Canada to return to a role of moral and practical international leadership. This should be similar to the days of "Pearsonian Internationalism": the days when Canada, as a middle-sized country, not a superpower, set an example of sacrifice for the common good. We promoted values of international understanding and harmony. We played an active role in promoting peace and tolerance among nations and especially between age-old rivalries and bitteresses.

Over the years, we have become recognized around the world for our willingness to sacrifice Canadian lives and wealth to try to bring the world away from the abyss of hatred and vengeance and towards the only hope of humanity — understanding and mutual tolerance.

In the service of our ideals and in service to humanity, Canada has been an active participant in UN peacekeeping initiatives for over 50 years.

The G-7 is a means, one of many means, open to Canada to promote its interests, including its interest in helping to lead the community of nations to larger visions and higher ideals. We should belong to it only if it helps us promote the ideals of a world in which peace, order and good government, the great Canadian ideals, should prevail for all countries and for all people, and not just for the lucky few.

• (1830)

I wish to pay tribute to the Prime Minister of Canada, the Right Honourable Jean Chrétien, who has decided to include the question of aid to Africa on the agenda for the next G-7 meeting in Canada.

In short, the time has come for Canada once again to become a leader of the middle, to set a moderate course for people in large, medium and small countries of every description around the world. The world needs a return of the idealism of Canada. This is the first great lesson for Canada from September 11.

I turn now to one of the chief lessons that I think we should draw at the domestic level as a result of September 11. There has been much comment about the apparent shortcomings of our immigration practices, if not our policies. I believe there has been justification in many of the criticisms. I believe there is a need for Canada and Canadians to reassess and reform our ideas, our habits, as well as our policies and programs directed at immigration and the integration of new Canadians in Canadian society. In my opinion, the whole complex of policies and programs at the federal and provincial levels affecting immigration and the systems for welcoming and rapidly integrating new Canadians has been in need of comprehensive reconsideration for many years. September 11 has made any further delay unthinkable.

As an immigrant to Canada myself, I do not criticize immigration policies lightly. However, I believe there is real danger to legitimate immigrants, of which Canada has great need, if illegitimate immigrants, not at all needed by Canada, seem to be favoured by our policies and practices.

I am aware that important changes in policies and measures have been considered in recent weeks by the Canadian government and more are no doubt to be expected. The Honourable Elinor Caplan has just concluded an agreement with the U.S. government that will benefit both countries and enhance the security of the citizens of our two countries. One of the chief messages of September 11, in my opinion, is that we have to do a better job of screening the entry of new Canadians, choosing the best for Canada's needs, deporting the worst without delay, and then helping new Canadians to integrate quickly and happily into the Canadian fabric.

However, getting our immigration policies right is only half the challenge. Anyone who has had the experience of being a new Canadian, as I have, will know that there can be a dissonance between the joy with which one appreciates becoming part of such a great country, and the disappointment when one discovers that the process of integration can be very slow and painful.

To summarize, Canada needs a high level of immigration to grow and prosper; but this calls on us to do a better job of

selecting and managing the flow of candidates for citizenship. Then, once they have been chosen and received into Canada, we must do a much better job of integrating them into our communities from sea to sea.

[English]

Continuing in this line of thought, and without waiting for complex policy processes to reach a conclusion, in light of the tragedy of September 11, I call on Canadians to make special efforts immediately to open their minds and hearts to the Islamic communities in Canada. They have a special need for warmth and welcome at this time.

Indeed, it is not generally known that, according to a report in *The Times* of London, the atrocities of September 11 were historically the worst terrorist attacks ever committed against Muslims in the West. Far more Muslims than British or Canadian subjects died in the World Trade Center. The same report noted that, although the media have been full of moving stories about various nationalities among the victims, similar reports about the Muslim victims have not been seen.

Canadians need to be aware that Canadian Muslims have been particularly hurt by the events of September 11. They have gone through a more harrowing experience than other Canadians. We must understand their feelings. They need to know they are seen as valuable members of the Canadian fabric. Indeed, our Muslim population is a source of great strength to Canada, as we define and advance our goals for the future. We need to embrace them. They make Canada a better country. We need to tell them that now.

I want to pay special tribute to one of the most respected members of our institution, the Senate of Canada, who is a devout Muslim, our esteemed colleague Senator Mobina Jaffer.

I repeat my important message: This is the time for Canadians everywhere to open their hearts and their minds to the Muslims in our midst. Moreover, "promoting peace, order and good government" in Canada requires that the friendships we need to build with Canadians Muslims should naturally be a two-way street. Muslim Canadians want to learn about Canada and to integrate into the national fabric as quickly as possible.

We, as individuals and as institutions, must make the appropriate efforts to understand and appreciate their origin, history, values and beliefs. I think the schools are already deeply engaged in this, but it needs to be done at all levels of Canadian society. In this way, September 11 can be turned from bad into good in Canada, if we mend and strengthen our approaches to immigration, treat potential immigrants better, and improve our approach to the Canadianization and integration of new Canadians.

[Translation]

This brings me, honourable senators, to the third and final element in this review of how September 11 should change Canada — this one at the level of individual Canadians.

I think that you will agree with me when I say that the tragic events of September 11 revealed a pressing new need for Canadians to become much better informed about the world we live in. Whether it is at the level of day-to-day international events or at the level of history, languages and culture, my impression is that Canadians, and especially young Canadians, have not been as well educated by their schools or informed by the media about foreign affairs as they need to be in order to understand and play their roles as good citizens in a troubled world.

Perhaps we should give consideration in the weeks ahead to special ways in which we can awaken, nourish and sustain a new level of awareness about international affairs among all Canadians. How might we do that? I leave my ideas on that question to further opportunities I will have to discuss this question both in the Senate and in the Foreign Affairs Committee. Indeed, I could see us setting aside time for a full debate on this question which goes to the heart of preparing young Canadians for leadership at the global level. And in my debating it and encouraging our committees to address it in many different contexts, perhaps we can raise its visibility and priority throughout the country. That would be a real service to the future of Canada.

To sum up, honourable senators, I believe September 11, 2001 has fundamentally changed Canada and its future. The tragic events and their aftermath have shown that, if the world is to avoid similar or larger catastrophes, Canada needs to resume its international leadership role as a “leader in the middle” in international affairs. Canada needs to review its immigration policies from top to bottom and for programs and ideas to be encouraged that will build bridges of understanding between Canadians and newly arrived future Canadians. Canadians need to become much more informed about world affairs and Canada’s place in them, with help and encouragement from many quarters, including from the Senate.

While these may not be the only lessons that we should draw from September 11, nor the only measures that these tragic events require from the government and from Canadians, they are among the most important ones, in my opinion.

Hon. Marcel Prud’homme: Honourable senators, I have a question for Senator De Bané. I will have an inquiry.

The hon. the Speaker *pro tempore*: Honourable senators, Senator De Bané’s speaking time has expired. If the honourable senator wishes to continue, he must have leave of the Senate.

The Hon. Fernand Robichaud (Deputy Leader of the Government): Leave is granted for one single question and one single answer.

Senator Prud’homme: I know the honourable senator’s opinions well. The purpose of his inquiry was to draw the attention of the Senate to certain lessons to be learned from the tragedy. Would it be possible, in future debate, to hear from the honourable senator, given his experience, on not only the lessons to be learned, but also on the causes of the September 11 tragedy?

• (1840)

Senator De Bané: Honourable senators, I wanted to draw three lessons from this. First, there was the role Canada should play internationally; second, there was the way Canada could facilitate the integration of immigrants — and on this score, I wanted to pay tribute to the Muslim community, which is suffering greatly but has contributed so much to our Canada; and finally, there was the need to make Canadians aware of the major issues of our times.

Clearly, some issues have to be dealt with as soon as possible, as they are central to the suffering, not only of the Palestinians — in a conflict that has lasted for more than 50 years — but of all Arab populations.

On motion of Senator Roche, debate adjourned.

[English]

NATIONAL FINANCE

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF EFFECTIVENESS OF PRESENT EQUALIZATION POLICY

Hon. Noël A. Kinsella (Deputy Leader of the Opposition), for Senator Murray, pursuant to notice of December 11, 2001, moved:

That the date for the presentation by the Standing Senate Committee on National Finance of the final report on its study on the effectiveness and possible improvements to the present equalization policy which was authorized by the Senate on June 12, 2001 be extended to February 26, 2002; and

That the committee be permitted, notwithstanding the usual practices, to deposit its report with the Clerk of the Senate if the Senate is not then sitting and that the report be deemed to have been tabled in this Chamber.

Motion agreed to.

The Senate adjourned until Thursday, December 13, 2001, at 1:30 p.m.

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(HANSARD)

Thursday, December 13, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Thursday, December 13, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before proceeding to Senators' Statements, I remind honourable senators that there will be filming or videotaping taking place in the chamber today, pursuant to the order of this house, which I will read:

That the Senate authorize the videotaping of segments of its proceedings, including Royal Assent, before the Senate rises for its forthcoming Christmas adjournment, for the purpose of making an educational video.

SENATORS' STATEMENTS

WORLD DAY OF PEACE MESSAGE OF POPE JOHN PAUL II

Hon. Douglas Roche: Honourable senators, I wish respectfully to call to your attention the Annual World Day of Peace Message of Pope John Paul II for January 1, 2002. The Holy Father's message is especially important this year because it springs from the terrorist attacks of September 11, 2001.

The World Day of Peace this year, says the Pope, offers all humanity, and particularly the leaders of nations, the opportunity to reflect upon the demands of justice and the call to forgiveness in the face of the grave problems that continue to afflict the world, not the least of which is the new level of violence introduced by organized terrorism.

I cannot do justice to the richness of his thinking in this short statement. I will just quote one short passage.

The various Christian confessions, as well as the world's great religions, need to work together to eliminate the social and cultural causes of terrorism. They can do this by teaching the greatness and dignity of the human person, and by spreading a *clearer sense of the oneness of the human family*. This is a specific area of ecumenical and inter-religious dialogue and cooperation, a pressing service which religion can offer to world peace.

In particular, I am convinced that Jewish, Christian and Islamic religious leaders must now take the lead in publicly condemning terrorism and in denying terrorists any form of religious or moral legitimacy.

To this end, the Pope has invited representatives of the world's religions to come to Assisi, Italy, the town of St. Francis, on January 24, 2002, to pray for peace.

The Pope's message is entitled "No Peace Without Justice, No Justice Without Forgiveness." Terrorism stems from hatred. The Pope is telling us we must take political steps to overcome hatred.

[Translation]

THE HONOURABLE MARISA FERRETTI BARTH

CONGRATULATIONS ON RECEIVING HONOURARY DISTINCTION
OF COMMANDER OF ORDER OF MERIT OF REPUBLIC OF ITALY

Hon. Lise Bacon: Honourable senators, on Monday, Marisa Ferretti Barth will be receiving the honorary distinction of Commander of the Order of Merit of the Republic of Italy.

I first met Senator Ferretti Barth in the early 1970s when she was canvassing MPs' offices for funding for her seniors' group. She has been responsible for the setting up 75 Italian-speaking seniors' clubs. She was also one of the founders of the first Chinese-speaking seniors' club in Montreal; and has been involved in organizing Russian, Lebanese-Syrian, Afghani and multi-ethnic clubs.

She has held different positions in Canada. In 1974, she founded the Regional Council of Italian-Canadian Seniors, of which she has been Director General since 1975; this organization has over 14,000 members.

As well, she has served on the board of the National Congress of Italian Canadians for the Quebec Region. I could scarcely list all the honorary titles and certificates of merit that have been awarded to her.

Bravo to Senator Ferretti Barth, who brings honour to the Senate of Canada as one of its members, and to the entire Italian community of the Montreal area, for her praiseworthy work with seniors and her constant concern for the disadvantaged in the Montreal area.

[English]

COAST GUARD

NAV CANADA—DISCONTINUANCE OF
AVIATION WEATHER REPORTS

Hon. Pat Carney: Honourable senators, I wish to inform you that the Coast Guard has delivered a very grim Christmas present to British Columbians who fly the coast, either as pilots or passengers.

The B.C. aviation community is alarmed over the announcement by NAV CANADA that effective tomorrow — just tomorrow — current aviation weather reports produced by B.C.'s lightkeepers will be discontinued. Cancelling this service on such short notice will put B.C.'s coastal aviators serving the central and north coast in winter, and their passengers, at risk. The question is, what steps can we take to ensure that NAV CANADA's life-threatening order is rescinded?

Aviation weather reports given by trained lightkeepers give pilots important information such as temperature, wind speed, direction and character, visibility, sea state and local conditions; for instance, if there is lightning in the area, extensive cloud, or fog. One can turn a corner on the B.C. coast and be into different conditions.

NAV CANADA says aviators will receive only marine weather reports; that is, information such as "partly cloudy — overcast," which is not sufficient to fly safely on the world's worst coast. We must take steps to ensure that this service is restored before lives are lost.

In its own gracious way, the order to the lights that went out just two days ago, December 12, simply says:

Effective 14 Dec 2001...you are to discontinue reporting the metar style weather reports. Specifically, do not report on cloud height and type, atmospheric pressure, altimeter readings, or give out the dew point after 0000 UTC 14 Dec 2001.

If you have direct requests for aviation weather information after 0000 UTC 14 Dec 2001, you must not provide any metar style aviation weather observations as you are not authorized to do so. Strict compliance with this policy must be adhered to. You may continue to give local marine weather reports upon request. Scheduled local marine weather reports will continue to be provided as usual. If you have any questions regarding this notice please call me.

• (1340)

It is signed by Terry Weber of the Coast Guard.

This order not to give aviation weather to pilots in an area where there are very few human settlements, no roads in many cases and no other source of aviation weather, will apply to Cape Mudge, on Quadra Island; Dryad Point; Nootka Lightstation, on the far side of western Vancouver Island, where there is no other permanent lightstation; Addenbrooke Island, where there is no other source of information; Egg Island lightstation; Cape Scott, on the north end of Vancouver Island; Chatham Point —

The Hon. the Speaker: I regret to advise Senator Carney that her three minutes have expired.

Senator Carney: May I finish the list?

The Hon. the Speaker: Is leave granted, honourable senators?

Senator Robichaud: No.

[Senator Carney]

Senator Carney: In the spirit of Christmas, thank you.

ÉMILIE OBONSAWIN

CONGRATULATIONS ON PERFORMANCE AT
OTTAWA CONGRESS CENTRE

Hon. Marie-P. Poulin: Honourable senators, it is with great pride that I rise today to pay tribute to a little girl from Greater Sudbury, Ontario, who last night thrilled thousands of people with her rendition of our national anthem at the Christmas party chaired by the Prime Minister and Madam Chrétien.

Seven-year-old Émilie Obonsawin's performance of *O Canada!* was the highlight of the event. I am sure that she and her family will look back on the occasion with fond memories. For those of you who were privileged to hear Émilie, I am sure you will agree that her splendid performance augurs well for a bright future as a singer.

Testimony to this grade two student's vocal talents was evidenced by the standing ovation that she received from the huge audience. For a seven-year-old from Sudbury, that must have been quite an astonishing night. I am sure that her parents were as proud as any parents can be of their daughter.

[Translation]

Honourable senators, on behalf of the 3,000 people who heard her rendition of *O Canada!* in both official languages, I thank Émilie Obonsawin. I also thank her parents, Carole and Pierre Obonsawin, who were kind enough to bring her to us. Émilie has reminded us that our greatest resources in Canada are our human resources, very often the ones out in the regions.

[English]

BUDGET 2001

NEGATIVE RESPONSES REGARDING ALLOCATION
FOR NATIONAL DEFENCE

Hon. J. Michael Forrestall: Honourable senators, the other day, the Leader of the Government in the Senate suggested that I was perhaps the only one who did not like the budget. I suppose if you are a Liberal candidate, with the exception of Minister Tobin, it was probably not a bad budget. However, if you are in need of tax relief or health care, or if you are in the military or must some day depend upon the military for defence, it was absolutely terrible. The grinch who stole Christmas is not a mythical creature at all; he is embodied in the Liberal Party of Canada.

Let us hear what Canadians had to say about the defence portion this first so-called budget in two years.

Mr. David Rudd, Executive Director of the Canadian Institute for Strategic Studies wrote:

As far as the Canadian forces is concerned it is a big disappointment.

Colonel Lee Myrhaugen, Coordinator of the Friends of Maritime Aviation said:

Almost an insult.

Professor Allen Sens, from the University of British Columbia said:

It's not going to solve the problems. It's not going to reduce capability commitment problems.

General Bob Morton, the former deputy commander of NORAD wrote:

The military has had to juggle equipment modernization and renewal programs, operations and maintenance budget, and personnel numbers in order to sustain the defence capability that still exists...the Trade offs that have worked thus far are exhausted.

Brigadier General Jim Hanson, Associate Director of the Canadian Institute of Strategic Studies said:

With everything considered, it's not very much money, but I guess it's better than a frozen boot in the butt.

In reference to the problem, Professor Peter Haydon, Senior Research Fellow from the Centre for Foreign Policy Studies at Dalhousie University said:

With all due respect, I don't think it's going to touch it. It's not enough.

Colonel Brian MacDonald, President of the North Atlantic Council of Canada said:

Whatever they get it won't be enough.

The editorial board of the *Winnipeg Free Press* wrote:

Defenceless Canada.

A cartoon caption in the *Chronicle Herald*, in Halifax read:

Please Do Not Feed the Soldiers.

A *National Post* headline read:

Armed Forces shortchanged by security budget.

Dr. Dan Middlemiss from Dalhousie University, wrote:

A drop in the bucket an embarrassment.

Honourable senators, it seems that not everyone is happy with the budget, save Liberal leadership contenders and the unilateral disarmament lobby for Canada 21, forever entrenched in the Liberal Party of Canada.

ROUTINE PROCEEDINGS

PRIVACY COMMISSIONER

ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table the report of the Privacy Commissioner for the fiscal year ended March 31, 2001, pursuant to the Privacy Act, Revised Statutes, 1985 Chapter P21, section 41, including the report for the period from January 1, to November 30, 2001, pursuant to the Personal Information Protection and Electronic Documents Act, Statutes of Canada, 2000, chapter 5 subsection 25(1).

[Translation]

AERONAUTICS ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Lise Bacon, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Thursday, December 13, 2001

The Standing Senate Committee on Transport and Communications has the honour to present its

ELEVENTH REPORT

Your Committee, to which was referred Bill C-44, An Act to amend the Aeronautics Act, has, in obedience to the Order of Reference of Monday, December 10, 2001, examined the said Bill and now reports the same without amendment, but with observations which are appended to this report.

Respectfully submitted,

LISE BACON
Chair

(For text of the observations, see page 1133 of today's Journals of the Senate.)

The Hon. the Speaker: When shall this bill be read the third time?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, later today.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to draw attention to the cooperation of this side of the chamber, given the season. We are fully in agreement.

On motion of Senator Robichaud, report placed on the Orders of the Day for consideration later today.

[English]

STUDY ON CANADA'S HUMAN RIGHTS OBLIGATIONS

REPORT OF HUMAN RIGHTS COMMITTEE TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table the second report of the Standing Senate Committee on Human Rights Rights, entitled "Promises to Keep: Implementing Canada's Human Rights Obligations."

On motion of Senator Andreychuk, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1350)

[Translation]

NATIONAL ACADIAN DAY BILL

FIRST READING

Hon. Gerald J. Comeau presented Bill S-37, respecting a National Acadian Day.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Comeau, second reading of the bill placed on the Orders of the Day for consideration two days hence.

[English]

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Isobel Finnerty: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have the power to sit at 3:30 p.m. on Thursday, December 13, 2001, to hear witnesses for its study on Bill C-39, an act to replace the Yukon Act in order to modernize it and implement certain provisions of Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

NATIONAL DEFENCE

WAR AGAINST TERRORISM—POLICY ON WIDENING FRONT TO INCLUDE OTHER NATIONS—RESPONSIBILITY OF NAVAL VESSELS IN ARABIAN SEA

Hon. J. Michael Forrestall: Honourable senators, my question is directed to the Leader of the Government in the Senate. Reports in the media indicate that the United States has commenced updating its target list for Iraq. They have also moved their Third Army headquarters to Kuwait. Senior officials of the United States have also made it clear in public statements that Afghanistan is just the start of its anti-terrorist campaign. What is the Government of Canada's position on widening the war to include attacks on Iraq, Sudan, Somalia, Yemen and other states that harbour, to our knowledge, terrorists?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. The Prime Minister has been very clear on this issue from the beginning. We supported the efforts of the Americans in Afghanistan because there was proof that al-Qaeda and Osama bin Laden had had a direct impact on the events that occurred on September 11. We are not prepared to further broaden our approach in other nations unless such a direct connection can also be made.

Senator Forrestall: Honourable senators, could the Leader of the Government indicate to us what would constitute, in the minds of the government, adequate information on which to base such a decision?

Senator Carstairs: Honourable senators, leading up to the Canadian and British involvement and participation in Afghanistan, the American government shared with governments that were willing to participate should proof be there, the proof that they had at their disposal. That proof was convincing enough to countries like Australia, the United Kingdom and Canada that they decided to participate in the efforts in Afghanistan. No such proof has been presented yet with respect to other nations.

Senator Forrestall: Honourable senators, obviously there is a consultative process that must come into play. What is that process within the coalition of those that have declared war on terrorism following the United States' lead, or is there some other mechanism? It is the mechanism that I am trying to identify.

Could the minister also indicate whether Canadian vessels in the Arabian Sea are taking part in the stopping and boarding of shipping vessels in that area?

Senator Carstairs: Honourable senators, with respect to the honourable senator's first question, clearly the mechanism would be proof positive of specific activities related to September 11. No such proof has yet been provided. It is fair to say that we are now quite aware that terrorists exist in a great many countries, probably including our own, and that the war in terrorism has to be very broad. However, when we talk about taking specific military action against a specific country, we must have serious proof of activity that would lead to action of that sort.

In terms of the vessels in the Arabian Sea, it is not my understanding that the Canadian vessels are participating in such activity.

WAR AGAINST TERRORISM—RESPONSIBILITY OF NAVAL VESSELS IN ARABIAN SEA —RULES OF ENGAGEMENT

Hon. J. Michael Forrestall: I appreciate the minister's responses. I am assuming that she has no information to suggest that Canadians are taking part in the boarding process that is now going on in the quest to board ships that may be carrying terrorists away from that part of the world. Can the minister indicate whether or not there are rules of engagement in place that would determine the conduct of Canadian vessels at sea in the hypothetical event that such an action might be required of the Canadian Forces? Are the rules of engagement clear and are they in place? Could the minister tell us what they are?

Hon. Sharon Carstairs (Leader of the Government): There is a very clear command structure. If a hypothetical situation became a realistic situation, the command structure would go into place. The rules of engagement would be determined by those in command at the particular location.

• (1400)

Senator Forrestall: Would there be an opportunity to debate those rules of engagement in the other place or in this chamber?

Senator Carstairs: The honourable senator knows that there have already been discussions and debate within both chambers with respect to the activities. I thought that he was referring to an on-site specific situation. That might not necessitate a debate. An action may have to be taken, quite frankly, before such a debate could ensue.

As to whether there will be broader engagements, the government has always indicated its willingness that if Canada takes on a broader mandate, then there should be debate.

TRANSPORT

AIR TRAVELLERS SECURITY CHARGE

Hon. David Tkachuk: Honourable senators, after Tuesday's Question Period in the other place, the Minister of Transport, in response to a reporter's question about whether there would be a review of the airport tax, said: "In fact, I talked to the Minister of

Finance at before Question Period, and he acknowledged the fact that there absolutely will be a review."

Honourable senators, this tax is supposed to pay for airport security, and you can only buy so much equipment and hire so many more people before you can no longer justify a fee of \$12 every time you board a plane. Could the government leader advise the Senate who is setting policy with respect to airport security and with respect to how much spending will be needed to upgrade that security? Is it the Minister of Transport, who is responsible for airports and for setting airline policy, or is it the Minister of Finance, who has just found a new way to raise \$450 million per year, plus GST, year after year, no matter how much is actually spent on airports?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as I indicated yesterday, it is the hope of the Minister of Transport that this fee will come down. I think that is what is being noted this afternoon. If all the equipment is purchased, if all the secure systems are in place and the cost of those has been paid, it may well be possible to reduce the fee. Cabinet sets the policy, and the person who will carry out that policy will be the Minister of Transport.

Senator Tkachuk: Honourable senators, the air travellers security charge, which is what this \$12 fee is called, is a ways and means motion. Nowhere in the motion does the government spell out the purpose of that tax. The motion describes who is to pay the tax and how much the tax will be, but it says nothing about how the money is to be spent. The motion notes only "That it is expedient to introduce an Act to implement an Air Travellers Security Charge..."

Honourable senators, could the government leader advise the Senate as to what safeguards the government intends to put in the enabling legislation for this tax to ensure that it is only used to pay for airport security and does not become another version of a dedicated tax, such as the one related to the Employment Insurance fund, where premiums far exceed program costs?

Senator Carstairs: Budget 2001 gave very clear directional signals as to exactly how this money is to be spent. It stated that they would allocate further resources to make air travel even more secure. The amount of \$2.2 billion is to be spent over the next five years, including \$1 billion for the deployment of an advanced explosive detection system, \$128 million for enhanced pre-boarding screening and \$35 million to assist airlines to enhance the safety of their aircraft.

Senator Tkachuk: Therefore, after four years, we will have no need of the tax.

Senator Carstairs: Honourable senators, the \$2.2 billion will be spent over the next five years. One anticipates that at the rate technology is increasing, there may be even better technologies five years from now in which the government may wish to invest to ensure that our security screening is, as has been requested in this chamber, the very best in the world.

Senator Tkachuk: We may have some skepticism on this side because I remember that the Minister of Finance, before he was the Minister of Finance and in the opposition, talked about the EI premium and that it was not a tax. The minister said at that time that a payroll tax was not a general tax. Now, that payroll tax is used for everything. As a matter of fact, he alone claims that is its one of the reasons that the government has been able to balance the budget.

I am wondering whether this particular tax is really a tax for airport security or just another tax on Canadians, which will exceed the five-year limit when they only need four years worth of money, as far as I can tell, at \$450 million a year. It appears that this tax will continue ad infinitum.

Senator Carstairs: As the honourable senator knows, the EI fund was a separate fund. The Auditor General, in a number of reports, indicated that it should not be an independent fund, that it should be put into general revenues. Under his administration, that is exactly what was done.

TREASURY BOARD

AUDITOR GENERAL'S REPORT—YEAR-END SPENDING

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government. The past and current Auditor General have both questioned the government's tendency to use various foundations to get rid of year-end cash. Indeed, in the introductory comments to her report released last week, Ms Fraser told us:

...the year-end spending spree by individual departments has been replaced by a similar practice at the aggregate level.

We see the government announcing large amounts of new spending close to the year-end. In these circumstances, we need to ask whether decisions to spend are based on when to record expenditures rather than on how to best use taxpayers' dollars.

She goes on to write:

Since 1997, the government has created a number of new organizations to support, for example, research and development, students in post-secondary education, and Aboriginal healing..

...I am concerned that a prime motivator for funding them in advance is the accounting impact on the government's bottom line: showing larger expenditures today and smaller ones tomorrow reduces the size of the current surpluses. I am also concerned that Parliament has only limited means of holding the government to account for the public policy functions performed by these foundations.

Not only is the government ignoring the Auditor General, but also it is taking its fancy accounting to a new level. Whether the Infrastructure Foundation and the Africa Fund get their promised money this year and how much they get will depend upon how much money is left over at the end of the fiscal year.

Will the government leader confirm the impression left by the budget that the exact amount of money to be handed over to the Infrastructure Foundation this fiscal year will be unknown until the day the books are closed next August?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is very clear a maximum amount of money will be given. The decision has been made that rather than pay down the debt for the fiscal year 2002-03, monies will be used for the Africa Fund and the Infrastructure Foundation. Frankly, I think that students across this country are living proof that foundations such as the Millennium Foundation, which guarantees scholarships in perpetuity, no matter the government of the day, is an outstanding success. I would disagree with the Auditor General that this is not the way to go. It is a very positive way to go.

Senator Bolduc: Honourable senators, could the government leader advise the Senate as to what discussions, if any, were held with the Auditor General regarding the budget announcement that the government would create two new foundations to spend money in future years, with the exact amount of funding to be charged to this fiscal year to be unknown until the day the books are closed for the fiscal year?

Senator Carstairs: Honourable senators, it would be entirely inappropriate for the Government of Canada to run its budget by the Auditor General.

ANTI-TERRORISM BILL

BROADENING OF SUNSET CLAUSE WITHIN LEGISLATION

Hon. A. Raynell Andreychuk: Honourable senators, I wish to point out to the Leader of the Government in the Senate the fact that the United States terrorism legislation has a built-in sunset clause because Congress may intervene at any time due to their constitutional system. The French have concluded their legislation with a full sunset clause, the effect of which will be that their bill will lapse in 2003. The House of Lords, our counterpart, has now voted down the British legislation, indicating that it wishes a sunset clause as part of that legislation.

In light of the fact that the House of Lords has indicated so strongly that the sunset clause is necessary, taking into account that we patterned the definitional sections of terrorist activity and bearing in mind that a unanimous report of this Senate recommended a sunset clause, would the government reflect and consider changing its position?

• (1410)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the government has made its position clear. The government believes the two most important sections of the bill that need a sunset clause have been given a sunset clause. Interestingly enough, in my reading of the House of Lords legislation, it is those two same areas for which the members of the House of Lords also wish to have a sunset clause.

GOVERNOR GENERAL

COMMENTS OF JOHN RALSTON SAUL IN RECENT
BOOK—GOVERNMENT RESPONSE

Hon. Gerry St. Germain: Honourable senators, my question is for the Leader of the Government in the Senate. It relates to something that is quite sensitive in the country with the recent release of a book by the viceregal spouse. Given that the Governor General is the Commander in Chief of our military forces, I believe, and that the viceregal spouse has taken an active role, does the government have a reaction to the author's position that was expressed in his book in respect of our American allies?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Governor General, like each and every one of us for the most part, has a spouse. We do not control the thoughts, the speeches and the publications of our spouses. I certainly do not control my husband's use of the English language and his expression of same, and I do not think my marriage would last very long should I try to impose such a restriction.

Senator St. Germain: Honourable senators, I believe title has been granted to Mr. Saul, and his expressions concern me because our military forces are in action. To be fair, I have not read the book. However, this is a sensitive issue and the book could be deemed a demoralizing factor. Will the government have a reaction to the opinion expressed in the book?

Senator Carstairs: Honourable senators, I, too, have not read the book, but I will protect the right of Mr. Saul's freedom of speech to the greatest extent possible.

Hon. Marcel Prud'homme: Honourable senators, I should like, without a shadow of a doubt, to completely dissociate myself from my good friend and neighbour on this issue. I, for one, would ask the Leader of the Government to offer my most sincere appreciation to this author. If we are to begin censoring authors in this country, there will be no end to it. If we are to begin removing from the shelves the books that Canadians should not read, Canada will become an extremely poor country.

I have read Mr. Saul's book, published by Penguin Books Ltd., and it certainly contains issues for debate. However, I am highly

appreciative of the stance that he expressed and the independence that he displayed.

FINANCE

THE BUDGET—FORECAST FOR UNEMPLOYMENT RATE

Hon. Terry Stratton: Honourable senators, in past years, budgets and economic statements have all provided forecasts of employment growth and the unemployment rate. Such numbers are essential to an understanding of the economic climate faced by a government. Indeed, they are essential to understanding the demands that are likely to be made upon the treasury and upon the determining the potential tax base. For example, last May's economic update told us the private sector economists expected the number of jobs to grow by 1.3 per cent this year and by 1.6 per cent next year. It also told us that those same economists expected the unemployment rate to be 6.9 per cent next year. This was all before the economy began its meltdown this spring, summer and in light of September 11.

The budget gives us forecasts for economic growth on interest rates for next year, but unlike in past years, there is no forecast for the unemployment rate or for job creation. Could the Leader of the Government in the Senate advise the Senate as to why the budget failed to include a forecast in respect of the unemployment rate?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Minister of Finance was clear in his statements in the budget to say that we are in a time of some flux. All Canadians recognize that we are dependent on what happens south of the border. Thus far, we have been extremely successful in keeping our unemployment figure at a much more favourable rate than their rate. The U.S. rate of unemployment has risen almost three times what our rate has risen, and I think the Honourable Minister of Finance was trying to do his best not to sell any false hopes or false expectations.

Senator Stratton: Honourable senators, I should like an answer to one simple, fundamental question. Does the government have any idea what the unemployment rate will be next year? If so, could the Leader of the Government in the Senate please advise the Senate on that forecast? Is the government afraid to give Canadians that figure?

We have been through this before when looking at budget forecasts one, two, three and five years down the road. Other countries give budgetary forecasts in the future. Minister Martin has always given us anticipated unemployment rates. Of course, that was during the good times. Now that we are in bad times, those numbers mysteriously disappear off the page. Could the Leader of the Government please tell us when the government will inform Canadians of the expected unemployment rate for next year?

Senator Carstairs: Honourable senators, the minister is not God and he cannot do that.

The honourable senator across the way will remember well when, in 1988, in the province of Manitoba, we went from one Liberal member in the chamber to 20 Liberal members. I took these new members to Brandon, Manitoba, to experience a mock question period. I pretended to be all the ministers of the Crown. They asked their questions and, of course, I did not answer any of them. Their complaint was exactly the same as that of the honourable senator. It is a perfect example of how Question Period works in this country at provincial legislatures and at the federal legislature. The opposition asks its question and I get the chance to answer them as I see fit.

Senator Stratton: Honourable senators, that is obfuscation in the highest form. The honourable senator is deliberately avoiding answering the question. That is exactly what is occurring. Why does the Leader of the Government not just tell this chamber that this is indeed what is happening? We will accept that.

Senator Carstairs: Honourable senators, it certainly has not stopped the honourable senator from asking questions. As of today, there have been approximately 439 questions asked in the chamber since September. Keep on asking and I will keep on answering.

FOREIGN AFFAIRS

UNITED STATES—WITHDRAWAL FROM ANTI-BALLISTIC MISSILE DEFENCE TREATY—GOVERNMENT RESPONSE

Hon. Douglas Roche: Honourable senators, my question is to the Leader of the Government in the Senate. Today, President Bush announced that the United States will withdraw from the anti-ballistic missile treaty so that testing for a national missile defence system can proceed. This action has already drawn comments from around the world. The honourable senator will recall that the United States sent a delegation to Ottawa last May to discuss this issue, at which time the government representatives expressed their concern about any breakout or abrogation from the anti-ballistic missile treaty, which has been a fundamental policy of Canada for almost 30 years. I ask the minister if the Canadian government has a response to the action today, and will a statement be made?

• (1420)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Roche for his question. It is clear that the American government has taken action, which is part of its right under the treaty. The treaty has a six-month clause which allows either Russia or the United States — and we must remember that it is a bilateral treaty between those two nations — to exercise this withdrawal. The United States has announced their intention to do that today. We take note of it, and we are concerned because we believe that the treaty has been the foundation of confidence and predictability on which multilateral

arms control system and nuclear disarmament rest. We hope that its replacements will do likewise, and we urge both the United States and Russia to use the six-month withdrawal period to develop a new framework offering the same level of global confidence and predictability provided by the treaty.

THE SENATE

POSSIBILITY OF REFERRING SUBJECT MATTER OF INQUIRY ON UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM TO COMMITTEE

Hon. Douglas Roche: Honourable senators, I thank the minister for that statement. I have had on the floor of the Senate for some time a motion dealing with the very subject of the anti-ballistic missile treaty and the missile defence system.

The motion was amended by Senator Finestone so that the subject matter of the motion, and, I emphasize again, not my view of the matter, but the subject matter per se of the issue of national missile defence, would be referred to the Standing Senate Committee on National Security and Defence for study.

I should like to ask, especially now in light of these latest developments and the urgency of the question, whether the minister gives her support to the amendment to this motion, mainly, to the amendment that the subject matter proceed to committee.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is not up to the Leader of the Government in the Senate to make that decision. It is up to the Senate itself.

HERITAGE

NATIONAL LIBRARY—DESTRUCTION OF ARCHIVED MATERIAL DUE TO INADEQUATE FACILITIES

Hon. Eymard G. Corbin: Honourable senators, my question is directed to the government leader. I wonder if she would be so kind as to put me down on the government's list of delayed answers for the following item. There have been over 90 incidents of leaking pipes, leaking roofs, and other such incidents at the National Library over recent years, with the net result of the loss of over 25,000 archived items. The situation seems to be going from bad to worse. I would like to know when the government intends to put in place remedial action on an urgent basis to correct that situation.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Corbin for that question. His question is an important one. It has been under active discussion as to when the National Library will get the upgrades it so desperately needs. As you know, the Parliamentary Library is presently undergoing repairs for exactly the same reasons, but there are other government structures, including this whole building, which need serious upgrading.

I will ask the question on behalf of the honourable senator as to specifically what plans are in place for the National Library, and get back to him as soon as possible.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table a response to the oral question raised in the Senate on November 29, 2001, by Senator Sparrow, regarding strychnine.

AGRICULTURE AND AGRI-FOOD

RE-ESTABLISHMENT OF BANNED CONCENTRATED STRYCHNINE TO CONTROL GOPHERS

(Response to question raised by Hon. Herbert O. Sparrow on November 29, 2001)

The action to ban liquid strychnine concentrate was taken by Agriculture Canada in 1992 to ensure that the safer, ready-to-use baits were used instead of the potentially hazardous liquid strychnine. The Government studied this matter in cooperation with the western provinces most affected by the gopher problem. Prior to the withdrawal of liquid strychnine concentrate, discussions were held with Alberta, British Columbia, Manitoba and Saskatchewan. This consultation involved the Western Forum and the Canadian Association of Pest Control Officials.

No formal economic studies were requested or reviewed during this consultation period because there was every expectation that the ready-to-use baits (containing 0.35-0.4 per cent strychnine) would be as effective as the baits which were mixed by farmers/ranchers using the liquid strychnine concentrate (approximately 0.3 per cent strychnine or less). It was only in the years subsequent to the discontinuation of the liquid strychnine concentrate that complaints about the performance of ready-to-use baits were received. Although these baits have been shown to be effective (achieving approximately 60-66 per cent control as demonstrated in recent research trials), they are less effective than baits made fresh with concentrate (i.e. 90 per cent control). It is now understood that freshness of bait affects performance.

In 1992 when this action was taken, strychnine was implicated in a number of intentional and unintentional poisonings of non-target animals, including dogs and wildlife. There were also some suspected human suicides linked to strychnine. No specific scientific studies on poisonings were reviewed prior to making the decision. Representations were made over a number of years by

concerned stakeholders (e.g. local police departments, R.C.M.P., Canadian Veterinary Medical Association, Humane Societies, Canadian Fur Bearers Association) and numerous media reports. This information, together with information from agencies collecting poisoning incident information (e.g. Western College of Veterinary Medicine) led Agriculture Canada to remove the liquid concentrate while retaining the strychnine bait.

In 2001, the Pest Management Regulatory Agency (PMRA) granted Emergency Registrations to the provinces of Saskatchewan and Alberta in 2001 to allow them to use the liquid strychnine concentrate for on-farm formulation of 0.4 per cent strychnine bait in controlled-access programs. The PMRA also met with Alberta and Saskatchewan pesticide regulatory officials, growers, and other stakeholders on November 16, 2001, to assess this program. Stakeholders were informed as to possible options for availability next year and over the long term and encouraged to research the efficacy of alternative products for ground squirrel control.

Canada is not alone in having taken action on strychnine. All above-ground uses of strychnine have been prohibited in the U.S. since 1988. It is illegal to use strychnine for pest control in most European countries.

There are alternative products registered in Canada.

[English]

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I draw your attention to the presence in our gallery of our former colleague the Honourable Bill Kelly.

Hon. Senators: Hear, hear!

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, as regards Government Business, we would like to begin with Item No. 1 on the orders of the day, followed by Item No. 6, second reading of Bill C-45, before reverting to the orders of the day as proposed in the *Notice Paper*, while adding Item No. 11, third reading of Bill C-44, which was reported earlier today without amendments.

[English]

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Sharon Carstairs (Leader of the Government) moved the third reading of Bill C-46, to amend the Criminal Code (alcohol ignition interlock device programs).

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read the third time and passed.

APPROPRIATION BILL NO. 3, 2001-02

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank you for the opportunity to address the question raised by my honourable colleague, Senator Lynch-Staunton, in connection with the \$100 million in grants included in Supplementary Estimates (A) for the Sustainable Development Technology Fund.

In doing so, I would like to assure the Senate that it has now been confirmed by both the Auditor General in her report and the ruling of the Speaker in the other place that the creation and funding of this initiative respects parliamentary authorities and practices. To answer the specific question put by my honourable colleague about how the government intends to address the particular concerns raised by him, let me explain.

The Speaker in the other place ruled on November 22, 2001, that he did not have an issue with the grant items in this Supplementary Estimate. He said that these were valid items and that Supplementary Estimates (A) for 2001-2002 could proceed. This leaves the outstanding issue of seeking parliamentary authority to confirm the original \$50 million advanced to not-for-profit private corporations under the interim authority that exists in Treasury Board vote 5.

As the Leader of the Opposition noted in his comments, the Speaker in the other place ruled that this issue can be addressed in the Supplementary Estimates. Indeed, let me assure

honourable senators that to address this issue and fully respect the terms of the ruling, pending consideration and passage of final Supplementary Estimates, the government will not use the current appropriation to reimburse Treasury Board vote 5 for the interim \$50 million advanced to the original not-for-profit corporation. Consistent with the usual practice concerning the use of the interim authority provided in Treasury Board vote 5, the government will seek Parliament's approval of a \$1 item in the final Supplementary Estimates for this fiscal year to authorize a \$50-million grant to the not-for-profit private corporation corresponding to the funds advanced from Treasury Board vote 5. In so doing, Parliament's approval will also be sought to utilize \$50 million of \$100 million to cover the costs associated with the \$1 item, specifically, the \$50-million advance from Treasury Board vote 5.

This will have the effect of leaving the total appropriated for this purpose, for this fiscal year, at the \$100 million originally announced in the budget. I can assure honourable senators that I have assured the other place that if this is not crystal clear in the Estimates that will be presented to us before we rise closest to the date of March 31, there will be considerable unease in this chamber and, indeed, reaction.

• (1430)

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, it is not crystal clear to me at all how the President of the Treasury Board can say that the \$50 million that the Speaker of the House of Commons challenged as to the propriety of being included in Supplementary Estimates (A) will be found in Supplementary Estimates (B). Yet, they are still in Supplementary Estimates (A) and also in the appropriation bill that is before us. We just want to get through this \$1 stuff, and the \$100 million stuff, and the "I will get back to you in the spring stuff if we do the wrong thing." We want an explanation as to how you can have the same amount, which has not been properly supported in the Supplementary Estimates, appear in the appropriation bill before us, while at the same time the President of the Treasury Board has said that she will take care of the matter in Supplementary Estimates (B).

Honourable senators, this is a simple question to which there should be a simple answer. How can the same amount appear twice in two separate Supplementary Estimates and then in two separate appropriation bills?

Senator Carstairs: The honourable senator has clearly identified the problem. The government has said that it will clear up that problem before the end of the fiscal year. As the Speaker in the other place said, they clearly have the time to do that. In his view, it was not necessary to amend the bill for the purposes of being in compliance since we had another estimate procedure prior to the end of the year. If we do not get what we require in that estimate procedure, then I would anticipate amendments would be coming from the other side in order to clarify the situation.

Senator Lynch-Staunton: Why is there not an amendment now to simply remove the \$50 million from the supply bill? When government comes back with the next appropriation bill, preceded by the Supplementary Estimates, we can take care of the matter then. If we pass the bill as it is now, we will approve an expenditure that the Speaker of the House of Commons has said was not properly before the House of Commons and — as the President of the Treasury Board has agreed — could not be taken care of except at another stage. In the current stage, however, we are told we can take care of it anyway. I absolutely disagree. The same item cannot be approved twice. It can only be approved once, and this is not the time to do it.

Senator Carstairs: Honourable senators, with the greatest respect, the Speaker of the other place did not rule as the honourable senator indicates that he did. He said that it must be cleared up by the end of this fiscal year and that the bill presently before us, which was at that point before the House of Commons, was in order.

Senator Lynch-Staunton: Honourable senators, contrary to what the leader said earlier, the Speaker in the other place said, "No authority has ever been sought from Parliament for grants totalling \$50 million." He then went on to say, as the minister has just told us, "However, as there remains ample time for the government to take corrective action by making the appropriate request of Parliament through the Supplementary Estimates process, the chair need not comment further at this time."

The President of the Treasury Board agreed with him and said, "I will take care of it in Supplementary Estimates (B)," which usually come out before the end of the fiscal year. There may then be a Supplementary Estimates (C). Now, however, we are asked, despite what the President of the Treasury Board has said and despite the warning of Speaker Milliken that it was inappropriate to include them in Supplementary Estimates (A), to confirm them in Supplementary Estimates (A). It does not stand up.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, given that we are dealing with a supply bill, the way out of this situation would be for an amendment to be made to the supply bill. We on this side would give consent that all stages be dealt with so that a message could be sent forthwith to the House of Commons, which we understand is sitting until tomorrow at least, so that there would be no blocking of the supply bill. That would be proper. The government leader has the full cooperation of this side of the house to clean up this mess.

Senator Carstairs: Honourable senators, the government does not take that position. They do not believe this matter needs to be cleared up now. They believe it needs to be cleared up before the end of the fiscal year, and they have given that undertaking.

Senator Lynch-Staunton: The undertaking is to clear it up, but what about the undertaking to Parliament, which used to have a direct supervision over the proper spending preceded by proper authorization of that spending. What has happened to that? All we are told is, "We messed it up. Do not worry about a thing. We

will come back in a few weeks, and if we mess it up then, we will raise a signal at that time." Well, we are raising the red flag now. The \$50 million should not be in this bill. It should not be there. The President of the Treasury Board herself told us that it would be taken care of at another time.

Why does the government not just own up to the fact that they made a mistake and prepare an amendment to reduce the total appropriations by \$50 million? As a matter of fact, to help the government, I prepared an amendment along those lines. It is very simple. One just takes the totals and the departments and reduces them by \$25 million in the case of department, totalling \$50 million. It is all there. I would be happy to forward this to the Leader of the Government in the Senate and she can move the motion and take credit for it. The House of Commons is obviously not doing its job as the guardian of the purse. It has the responsibility to do what we are doing. Let us show that we are more responsible than they are and do the right thing.

Hon. Pierre Claude Nolin: I was referred to you, Madam Minister, when I asked a question of the sponsor of the bill concerning a request from the Canada Customs and Revenue agency and the lack of a proper, detail offered by the officials from Treasury Board before our committee. What is behind a request of \$288 million to address operational workload pressures and to pursue revenue generation initiatives?

Senator Carstairs: Honourable senators, I do not have that information for the honourable senator, but I will try to obtain it for him.

On motion of Senator Lynch-Staunton, debate adjourned.

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,

And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

"Expiration

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4."

Hon. Gérald-A. Beaudoin: Honourable senators, I wish to support the amendment proposed by the Leader of the Opposition — that is, a sunset clause in Bill C-36.

In the domain of antiterrorism, two solutions were possible for the government after the events of September 11. The first one was to proclaim a declaration of emergency under the Emergencies Act of 1988. That act has repealed the War Measures Act. The new regime is much more adapted to our era. It covers several emergencies, it delegates strong power to the federal executive and, as an emergency measure, it is transitory.

The second solution was to adopt a permanent law on terrorism. The government made its choice — a permanent statute. I am glad this permanent statute has no "notwithstanding clause."

A majority of experts and associations have suggested that a sunset clause be enshrined in Bill C-36. Even the government, after our pre-study in the Senate, accepted the idea of a sunset clause. Since in Bill C-36 some new crimes are created and additional powers are given to the police, it is mandatory, in my view, to realize an equilibrium between those new powers and the Canadian Charter of Rights and Freedoms. The sunset clause proposed by the Honourable Senator John Lynch-Staunton would do that.

Honourable senators, we should remain inspired by our pre-study, which was unanimously accepted by the Senate. We do not sunset the Criminal Code. We sunset one measure, Bill C-36, which is a measure of criminal law. That is quite different. That sunset clause is for five years. Some suggested one year; the Canadian Bar Association suggested a three-year sunset clause; and in our pre-study, we suggested five years.

• (1440)

The proposed sunset clause is not all-encompassing. There are four exceptions with respect to the proposed sunset clause: hate activities in the Criminal Code; mischief against religious property, again in the Criminal Code; hate propaganda over the Internet, the Canadian Human Rights Act; and all our international obligations concerning the conventions signed by Canada and referred to in the definition of "United Nations operation" and the definition of "terrorist activity."

Since this bill is permanent, the actual jurisprudence on the Canadian Charter of Rights and Freedoms does apply. That

jurisprudence is considerable — more than 400 cases. The interpretation of many cases may vary in emergency times and in ordinary times. In other words, because this bill is permanent, the attitude of the court may be more severe. The debate has reached its last hours.

[Translation]

The sunset clause was accepted by the government regarding two situations: arrest and preventive arrest, and forced interrogation. This is not changed, but we must go further. We propose that the scope of the sunset clause be all-inclusive, except for the four areas that I mentioned earlier.

We must take into consideration what the Canadian Bar Association proposed, before the special committee and in a letter dated November 27, 2001 and addressed to the Honourable Minister of Justice. According to the CBA, the sunset clause should apply to other provisions of the bill, including:

The provisions that allow the creation of lists of entities and persons whose goods would *ipso facto* be seized and confiscated, since this would have a deterrent effect on their trading partners;

The provisions empowering the Minister, as opposed to a judge, to issue warrants for electronic surveillance;

The additional power given to the Minister to block application of the Access to Information Act and the Privacy Act;

And all the provisions that allow authorities to make decisions on people's rights and freedoms and on their eligibility as trading partners, based on evidence that these people are not allowed to examine.

In 2001, the Supreme Court stated, in the *Mentuck* case, that Canada was not a police state. This is true. We are a democracy. I agree with the amendment moved by Senator Lynch-Staunton. As the Canadian Bar Association explained in its November 2001 brief, on pages 13, 14 and 15:

Debate suspended.

• (1500)

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it being 2:45 p.m., pursuant to order passed by the Senate on Wednesday, December 12, 2001, I must interrupt our proceedings on Bill C-36.

The bells will ring for 15 minutes, so that the vote can take place at 3 p.m. Call in the senators.

[English]

Motion in amendment adopted on the following division:

YEAS

THE HONOURABLE SENATORS

Adams	Joyal
Andreychuk	Kelleher
Angus	Keon
Atkins	Kinsella
Beaudoin	LeBreton
Bolduc	Lynch-Staunton
Buchanan	Meighen
Carney	Moore
Cochrane	Murray
Comeau	Nolin
Cools	Prud'homme
Di Nino	Rivest
Doody	Roche
Eyton	Sparrow
Finestone	Spivak
Forrestall	St. Germain
Gill	Stratton
Grafstein	Tkachuk
Gustafson	Watt
Hervieux-Payette	Wilson—41
Johnson	

NAYS

THE HONOURABLE SENATORS

Austin	Jaffer
Bryden	Kirby
Callbeck	Kroft
Carstairs	LaPierre
Chalifoux	Léger
Christensen	Losier-Cool
Cook	Maheu
Corbin	Milne
Cordy	Morin
Day	Pearson
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finnerty	Rompkey
Fitzpatrick	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gauthier	Taylor
Graham	Tunney
Hubley	Wiebe—40

ABSTENTIONS

THE HONOURABLE SENATORS

Banks—1

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

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(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4."

The Hon. the Speaker: Could I please ask for order? It is quite noisy in the chamber. It makes it very difficult to hear the Honourable Senator Beaudoin, who has the floor.

• (1510)

Hon. Gérald-A. Beaudoin: Honourable senators, before the vote I was about to quote the Canadian Bar Association:

This Bill creates extraordinary powers, several of them beyond the realm of what would have been acceptable just a few months ago. It is difficult to predict how law enforcement agencies will use these new powers or how effective those powers will be in eradicating the current threat of terrorism.

When governments seek to impose extraordinary restraints on fundamental rights and freedoms, these restraints must be limited in duration. This principle is recognized by both domestic and international law.

As the bar has suggested:

At the end of the three-year period, Parliament could decide that Canada can comply with our international obligations in a less extraordinary and intrusive manner. Under international law, a country is always free to change the way it implements international treaties. A sunset clause ensures that Parliament will explore this opportunity in a meaningful way, without being bound to the original, hasty passage.

Honourable senators, we defend our values on the international scene. I am very proud of my country. My wish is that we continue to defend these values at home.

As Thomas Jefferson said in 1824, "Nothing then is unchangeable but the inherent and unalienable rights of man," and woman, of course. The Canadian Charter of Rights and Freedoms is a great heritage. It is possible, in my opinion, to reconcile additional powers with rights and freedoms. It is a question of equilibrium, and our country may do that.

Hon. Mobina S.B. Jaffer: Honourable senators, I rise to oppose the amendment.

The September 11 terror attacks were a blow that struck all humanity.

On Tuesday, I was honoured to meet with Algeria's new ambassador to Canada, His Excellency Youcef Yousfi, who, as the representative of a Muslim nation, most eloquently expressed how people throughout the world view the terrorist attacks.

[Translation]

He said:

Blind, cruel terrorism, which had been striking at various targets throughout the world, attacked the world's most powerful nation in a spectacular and dramatic fashion. There are no terms strong enough to describe the horror of this attack, and the world was not wrong to denounce it unanimously.

Far be it from us to claim to have learned anything from these events, which showed just how precious and fragile security is, and that we must all work together to preserve and safeguard it. They also showed that the fate of humanity is most certainly one and indivisible and that what can happen in one country can very well happen in another. I also believe that no longer can anyone remain indifferent to the suffering of others.

Naturally, Algeria has condemned these terrorist attacks in the strongest terms and conveys its sympathy to the American people.

[English]

On a recent visit to New York City, I saw for myself the horrors of Ground Zero. It was like the United States with its

heart ripped out. I heard the sound of the wrecking ball banging again and again and again against the steel beams of what was once the World Trade Center. Two storeys of wreckage stand defiantly. One is left with a vivid impression that the wreckage is staring back at you, refusing to disappear. The clinical images we have all seen on television cannot begin to describe the reality of the silently weeping people. The indescribable smell of that place is still lingering in my nostrils as I speak to honourable senators today.

Many of us have personal stories of friends and family affected by the tragedy of September 11. Therefore, I stand to oppose the amendment.

My most precious niece, Azra Nanji, an American citizen, was at the World Trade Center when the terrorists smashed the plane they had hijacked into the shimmering glass wall. The last words I heard from her over the telephone were these: "Auntie, I have to go. We are being evacuated. I can't talk anymore."

The remainder of the day passed very slowly. After many futile attempts to call New York City, we finally heard from her again. We wept tears of joy, but also of sadness, as she is still looking for many of her friends and for many others.

For people like my niece, I stand to oppose the amendment because I believe there has to be certainty.

From this tragedy in the U.S. came the birth of Bill C-36. This is a bill that could change forever our landscape, a bill that could lead a gentle nation of people who trust one another to become a suspicious nation where we spy on our neighbours.

On September 11, honourable senators, we lost our tenderness and our innocence.

Events like those of September 11 cause great paranoia, fear and anger to grow within us. When these mingle with misunderstanding, ignorance and intolerance, even the most peaceful communities of our great country can be shocked by crimes of hate. Terms like "backlash" and "revenge attacks" do not apply in these cases, as they suggest that the victims have done something to deserve the discrimination to which they are subjected.

As all honourable senators are aware, the overwhelming majority of Canadians in these communities have a deep love of our country. They desire no more than the peaceful and prosperous life that this great nation offers them. These are crimes of hate, pure and simple, and Bill C-36 contains new protections for minorities discriminated against in this way.

If this chamber passes the bill before us, a new crime relating to attacks on religious structures will be created. This provision will add to existing laws against hate crimes and further protect communities from attack on their spiritual core, such as those we saw in Hamilton and in my own province of British Columbia.

Canada's churches, temples, mosques, synagogues and cemeteries will be protected by this bill. Those who would attack them may very well be deterred. Those who have attacked them will be punished severely.

Bill C-36 will also assist in mitigating the spread of the hate that gives birth to so many attacks, allowing a judge to order the removal of hate propaganda from the Internet. No longer will purveyors of these messages find an open forum to spread their lies. No longer will Canadians and their children be exposed to messages of hate.

This chamber, through the Special Senate Committee on Bill C-36, has devoted a great deal of time and energy to scrutinizing the bill that is now before us. Much of this was done even before the bill was passed to us from the other place, in the pre-study. This pre-study produced a report that made numerous recommendations for the improvement of the bill. Some of these have resulted in significant improvements to the current version of Bill C-36 over earlier drafts. There is now more room for oversight through the sunset clauses in the areas of preventive arrests and investigative hearings. There is more judicial authority over the Attorney General's issuance of certificates as well as the provision for annual reports by not only the Minister of Justice and the Solicitor General but also their provincial counterparts.

• (1520)

Since receiving the bill from the other place, we have had an opportunity to hear many of the witnesses who testified during the pre-study as well as from many new voices. The issue that I have concerned myself with since we were first presented with the task of examining Bill C-36 is that of racial profiling. It is a concern of many in my own community, and others, that they may be singled out for persecution under sections of this bill.

One witness before the special committee, Mr. Mia, a member of the Muslim Lawyers Association and the Coalition of Muslim Organizations, speaking of the plight of Muslims since the events of September 11, noted that the fear they feel has doubled. They not only fear terrorism, as most Canadians do, but also fear that they will be targeted unfairly by the police.

Canada's police, however, are among the best in the world when it comes to sensitivity to minority groups. I am confident that that tradition will continue. I have received numerous assurances that the police forces are committed to continuing sensitivity training. I am also assured that funding is in place to ensure that, as officers are trained to implement Bill C-36, funding will be given to ensure that they are made aware of other cultures' need for fair and considerate treatment. When I posed the question of racial profiles to RCMP Commissioner Zaccardelli, he told us:

We do not do race profiling. We investigate criminal act or acts that we believe are criminal in nature. We investigate

those and try to prosecute those as best we can. We do not look at a person, the gender, the colour or religion of the person. We simply investigate criminal acts.

I believe and trust the assurances that Commissioner Zaccardelli has given us. When I posed a similar question to the Director of CSIS, Ward Elcock, he explained:

We do in fact do some profiling. The profiling that we do is essentially to provide Immigration with an essential set of things to look out for in respect of particular groups or organizations. That is not a racially-profiled list.

I believe and trust the assurances that Director Elcock has given us.

When I asked the Solicitor General what was being done to ensure that those enforcing laws such as those contained in Bill C-36 are sensitive to cultural differences, Minister MacAulay said:

Any training that needs to be done, it has been indicated quite clearly that it will be done.

He has gone on the record several times in the other place with this promise. I trust and believe the assurance that Solicitor General MacAulay has given us.

Most of all, honourable senators, I stand here in front of you as a refugee that nobody else wanted — except Canada. I have faith that a country that has given me refugee status and has now appointed me to be a senator in this great chamber will not let the people that I represent down.

On Monday, in his budget, the Minister of Finance said:

If ignored, intolerance can threaten the fabric of our nation and we must answer it. It can divide our communities and we must stop it. That is why the Government will provide new funding, aimed at fostering respect and promoting our values which have allowed us to welcome so many to Canada, so many who have enriched us so much.

I believe and trust Canada's government.

[Translation]

I believe that I have confidence in our government.

[English]

There are many who speak of the need for oversight provisions in this bill. It does contain significant room for oversight, including the annual reports, judicial oversight, the five-year sunset clause and the thorough review that will be undertaken by Parliament three years after this bill comes into force. That is why I respectfully submit that there is no need for an expiration date and oppose this amendment.

We also have the capabilities of other oversight bodies including the Privacy Commissioner, the Information Commissioner, the Canadian Human Rights Commission, the RCMP Public Complaints Commission, the Security Intelligence Review Committee, the commissioner with respect to the Communications Security Establishment, and the complaint and review mechanisms that apply to police forces under provincial jurisdiction to exercise their respective mandates over areas of this bill.

We as Canadians will be vigilant. We will keep a close watch on our rights and freedoms. Nothing in this bill or any other piece of legislation can take away or reduce our basic human rights that are an irrevocable and essential part of our beloved Canada. I myself vow to be vigilant in the scrutiny of the enforcement of this bill and vigilant in safeguarding the safety and liberty of all Canadians.

We are a nation of people that has always worked hard to be a harmonious nation and a nation that has a strong multicultural policy to ensure all people feel included in the life of our nation. We place great value on the harmony of our nation. What do I understand as harmony? Let me explain.

We have a great piano player amongst us — Senator Banks. He will tell us that on a piano we can get some kind of harmony if we play just on the white keys and some kind of harmony if we just play on the black keys, but to have real harmony we have to play both on the black and white keys. We are a nation that believes we must have all people included to have real harmony.

I oppose this amendment because I believe that we have to stand with our neighbours, because on September 11 the heart of America was suddenly and brutally ripped out. It is now up to us to start the healing.

Hon. Senators: Hear, hear!

Hon. Wilbert J. Keon: Honourable senators, I wish to offer a few brief remarks on Bill C-36. We all acknowledge that we are experiencing a very unusual time in our history; we all acknowledge that unusual circumstances require unusual actions on the part of our government. Hence, an unusual piece of legislation, Bill C-36, has appeared on the Canadian landscape.

I must admit that my comments are motivated in large part from my interface over the years with the Arab world. I have had the privilege of training and helping to educate many gifted young Arab doctors. I have visited them back home and helped them to get established. A number of them remain with us at various stages of their training. Some have become Canadian citizens and practice here in Canada.

The horrible events of September 11 left Muslims in general tarred with the same brush as the terrorists. Now comes Bill C-36. I ask you, honourable senators, if you were a Muslim or an associated minority, would you feel apprehensive, threatened or even paranoid, especially since privacy is an area where Canada's domestic human rights protections already fall short of international standards.

• (1530)

Testimony has been heard from experts in criminal law, human rights, security, policing, and the finance sector, as well as from information and privacy commissioners and many others. We have all received correspondence from concerned Canadians. I appreciate the enormous time and effort that everyone engaged in the debate has given to study this bill in such a careful fashion.

Despite the plethora of discussions, I reiterate that the recommendations of the pre-study report of the Special Senate Committee on Bill C-36 are designed to achieve the balance that Canadians are afraid of losing with the passing of the bill as it stands.

Bill C-36, with the unanimously supported pre-study recommendations, would provide Canada's first legislation directed at protecting Canadians from terrorist attacks, well in advance of any attacks being carried out.

From a broad perspective, when the dust settles, this bill may not affect the vast majority of people but may produce anxiety for special groups. We must educate and reassure them that the rights and freedoms of Canadians will remain.

There is little doubt that there will be mistakes made along the way in the application and implementation of the proposed law, and some hardships will occur.

Senator Carstairs mentioned, and I appreciate her intervention, that checks, balances and safeguards are in place to ensure that the powers prescribed by this bill are not abused. Overall, it would be a monumental mistake to exclude the all-encompassing sunset clause to this bill and the proposed appointment of an officer of Parliament to oversee the application of Bill C-36.

As the Honourable Senator Meighen stated the other day, in the context of human rights, we are struggling to find the right balance between the preservation and promotion of human rights while, at the same time, drafting laws that will enable our government, our police forces and other agencies to mount an effective fight against terrorism.

Honourable senators, let me now turn to speak directly to the amendment proposed by Senator John Lynch-Staunton. This amendment would terminate the applicability of the provisions of Bill C-36 five years after it receives Royal Assent. Only four clauses would survive. They deal with Canada's obligations under international covenants, the provision of hate propaganda, desecration of religious property and hatred spread over the Internet. Because of its nature, this is a true sunset clause because the bill would completely terminate on the appointed date. This would give a measure of relief to those who I believe will be targeted under this bill. It is also preferable to the so-called sunset clause introduced by the government in relation to the provisions of preventive arrest and investigative hearings. That sunset clause just barely dips on the western horizon and reappears almost automatically shining in the east.

The provision of a real sunset clause is also consistent with a great deal of the testimony heard by the Special Senate Committee on Bill C-36. While many witnesses advocated this, I would like to refer specifically to the brief presented by the Canadian Bar Association.

The witnesses from the Canada Bar Association described Bill C-36 as “wide-ranging,” containing complex and interrelated provisions. They stated that “when governments seek to impose extraordinary restraints on fundamental rights and freedoms, these restraints must be limited in duration.” This is a principle recognized in our Emergencies Act and also in the International Covenant On Civil and Political Rights. Public emergencies and the extraordinary measures needed to cope with them are time limited.

While the bar does not concede that the powers contained in Bill C-36 are necessary, they do say the following:

“...sunset clause will ensure that they apply only as long as needed. Canada should revert to the laws and rights we know unless circumstances then dictate that the extraordinary regime foreseen by Bill C-36 be prolonged.”

In fact, the two most vociferous witnesses who spoke against the imposition of a sunset clause were the police forces and the Minister of Justice herself. The minister stated that the threat of terrorism may not disappear. I am afraid that on this she may well be right, but surely with a five-year sunset clause the terrorists will know that we are serious in our resolve to fight terrorism. At the same time, those who may be concerned about the misapplication of these draconian provisions will be assured that with a certain time limit there will be a return to our normal regime where civil rights are given their greatest protection.

The minister claimed that those who supported a sunset clause did so because this might add to the constitutional legitimacy of the bill. This is like setting up a straw man in order to knock it down. Few, if any, constitutional scholars subscribe to this view, as virtually all realize the provisions of this bill will rise and fall on their own merits regardless of a sunset clause.

Finally, the minister expressed concern that such a clause might adversely affect ongoing court cases and public investigations. This will not be the case if the government acts to justify and reintroduce the bill. Ongoing prosecutions will continue even if the law expires because the conduct on trial would be considered to be a crime when it occurred, regardless of what happens to Bill C-36.

It is for these reasons that I support the provisions of the Senate pre-study committee report and the amendment introduced by Senator Lynch-Staunton. I will close by reminding senators of what the report said concerning the need for a sunset clause:

The Committee realizes that now is a time of heightened anxiety, fear and confusion and that it is important that departures from our legal norms be reconsidered at a time

that will allow for sober reflection and a full evaluation of the effect of these new measures. The most appropriate manner to address this issue was the subject of intense discussion during Committee hearings.

The Committee recommends applying a five-year expiration clause — a “sunset clause” — to Bill C-36. In this way, the government would be required to return to Parliament to justify the continuance of the powers granted, assuring Canadians that the tools are sufficient, yet not exorbitant, and that they continue to be justifiable and necessary in the battle against terrorism.

I mentioned at the outset that Bill C-36 is an unusual law for an unusual time. We are obliged to support our police forces and law enforcement agencies to deal effectively with terrorist activity, but we are even more obliged to do everything in our power to get through these unusual times and get back to usual times.

Allow me to quote the British philosopher Karl Popper from his book entitled *The Open Society and Its Enemies*. In it, he writes as follows:

We must plan for freedom, and not only for security, if for no other reason than that only freedom can make security secure.

• (1540)

Hon. Lois M. Wilson: Honourable senators, I support this amendment largely because of my observations concerning the processes of this Senate at its committees. I have always thought the committees of the Senate are its Crown jewels, but when that splendid all-party special committee was established to do the pre-study of Bill C-36, I relaxed, confident that such an excellent committee would pick up many of the problems the public had spotted with the bill and so it did, carefully, and probably with blood, sweat and tears.

The Minister of Justice did make some changes so we have a better bill than we had originally, but many sectors of the public continue to press for further amendments, and many of us receive phone calls and are still receiving phone calls from nervous citizens indicating that the Senate was their last hope for modifying the bill further and they thought that was our function. They hoped that the Senate would stand firm in backing its special all-party committee and its recommendations, but the Senate all-party consensus recommendations, when push came to shove, were abandoned. I think that the Senate has lost a great deal of credibility with the public because of that result.

Somewhat the same process took place with Bill C-7. When reversal of a Senate committee's near consensus judgments or total consensus happens, I find it extremely problematic for the democratic process. I am not interested in knowing all the details of the political trade-offs. I am more interested in the impact these bills will have on the public, and the question that such a process poses to the integrity of the processes of the Senate.

Honourable senators, I am a member of only one committee, since that is a rule laid down only for independent senators. I used to chafe under that but I am now more content than ever to be a full member of only one committee. My point is, of course, this chamber is free to not accept its committee's recommendations if it likes. Why then spend time and energy struggling to craft amendments that will improve a bill when it is evident that this chamber has twice now not supported its own committee process, even when there was consensus and near consensus on these bills?

Currently the jewels of the Senate, which are its committees, have lost much of their lustre for me. For this reason, and for others, I hope honourable senators will support this important amendment.

Senator Kinsella: Bravo!

Hon. Consiglio Di Nino: Honourable senators, I wish to add a few comments to those already expressed on this issue.

First, I must say I was particularly impressed by Senator Lynch-Staunton's excellent presentation yesterday. Senator Kelleher, as well, had some particularly pertinent things to say concerning his experiences while Solicitor General of Canada. I think the remarks of both should give us all cause to reflect more deeply on the bill before us. I would also like to align myself with the comments made by both Senator Keon and Senator Wilson a few moments ago. They, too, should give us cause for thought.

Honourable senators, I suspect in our hearts most of us, to some degree at least, are uncomfortable with the consequences of this bill. Yesterday, Senator Grafstein told us he believes that any blatant and systematic abuse of powers contained in the bill will quickly lead to a response from a variety of sources, including Parliament, and in particular, the Senate. I happen to agree with him. As he well knows, as do others in this chamber and those who have suffered under some of the conditions that have been imposed on us in the past, in a democracy abuses and misuses are not generally blatant or openly public. We must always rely on oversight agencies, public complaints commissions and others as our source of information. However, as Senator Kelleher said yesterday, this information is often difficult to obtain because those who perpetrate the abuses usually are not forthcoming — at least without some official complaint or request.

Yesterday, I expressed my own fears on this issue in this chamber, fears borne of personal experiences half a century ago when I first came to this country. Since then, honourable senators, Canadian society has changed in many ways. Our laws are stronger. Discrimination is tolerated far less than it once was. Those in authority, thank God, reflect our diversity to a greater degree. However, is it perfect? Have we been able to eliminate racism?

I suggest to you, honourable senators, that only dreamers among us could answer that question positively. There are good cops and there are bad ones, professional intelligence officers and unprofessional ones. No one really is beyond reproach and mistakes happen. Rules are sometimes bent, or broken in the heat

of the moment, or by calculated design. Given these extraordinary times and the extraordinary powers we are contemplating in this bill, mistakes are bound to happen and abuses, I suggest, will no doubt occur.

Honourable senators, this bill has profound implications for our country. In the name of national security and the so-called fight against terrorism, the government intends to infringe upon some of our most fundamental civil rights. Among the civil liberties affected by this legislation, this bill will strip away many of the rights to privacy we have grown accustomed to believing were inviolable. It will severely curtail our access to information of what the government and police are up to in the name of terrorism and national security. The consequences of this quite formidable bill are as yet unforeseeable. The devil, as always, is in the detail, and in this case, in its application.

In some respects at least, the threat posed to our civil democratic society by Bill C-36 may perhaps be more real than those posed by terrorism. I believe, however, that under the present circumstances we have to, albeit reluctantly, subject Canadians to the conditions Bill C-36 will impose on all of us, but only — and let me be clear — with appropriate supervision and a strict time limitation. Without the latter it is my fear that, like the War Measures Act and the Income Tax Act, both intended as temporary legislation, Bill C-36 will be with us for a long time.

Honourable senators, Canadians should understand that the defeat of the Taliban in Afghanistan will not bring an end to terrorism. Neither will the capture or death of Osama bin Laden or his disciples. Terrorism will only end when its root causes are addressed. Until there is no poverty, no discrimination, no people struggling anywhere to free themselves from oppression and occupation, there will always be terrorism somewhere. If history has taught us anything, it is that these causes will never be totally eradicated.

In fact, I fear that eliminating bin Laden and his cohorts may well have just the opposite effect — creating martyrs and inflaming passions. Violence, as we have sadly seen over the years, begets violence. However the threat of terrorism, the possibility of terrorism activities in Canada, in my opinion, is not serious enough to justify the types of measures being proposed in this bill to be instituted on a permanent basis. This bill is intended to respond to the particular set of circumstances that came about because of the events of September 11 of this year. How long would it take to deal with the fallout of those tragic events is anyone's guess. It could be months or it could be years. In both cases, I think it is imperative that proper supervision and a set time limit on the powers of this bill be set out so that we in Parliament can have the opportunity to revisit it once the emotion and rush of present events have passed.

Honourable senators, since September 11 the government has done what can only be described as a lamentable job in educating the public on this issue. Within the context of the issue here before us, it has failed, beyond vague generalities, to explain to Canadians why the extraordinary measures contained in this bill are needed. That is why we have such loud and harsh criticism of this bill.

Many have questioned why this bill, with its wide-ranging implications for our civil society, is being pushed through at such a fast pace. We in the Senate once again are succumbing to pressure from the other place.

• (1550)

Honourable senators, if this bill passes as it is, the federal government and our various police and security forces will have far greater rein to intercept our communications, pry into our private lives and detain citizens on suspicion rather than proof. Many Canadians have expressed the fear that the ugly practice of racial and cultural profiling will become more common.

Governments, police and security forces will be free to engage in each of these activities with little or no independent supervision. The government tells us we can trust them and the police to look after our nation's best interests unimpeded by public debate and accountability. Unfortunately, past experience has shown otherwise.

I realize that terrorists do not play by any rules, at least, not the rules of decent civilized society. They maim and kill the innocent with scant thought for human life or the dignity of others.

I reluctantly accept the notion that governments, police forces and security agencies sometimes need extraordinary powers to combat those who would murder our friends and fellow citizens and those whose hatred and madness blind them to usual human decency. However, these powers must be carefully circumscribed, controlled and checked. There must be some form of countervailing power or some method to ensure that the extraordinary does not become the common, the accepted and the status quo. Our civil liberties are the bedrock of our democratic society. They should be tinkered with only if proper safeguards are in place to eliminate abuse and misuse.

Canada has decided to join an international effort to hunt down and punish the people and organizations that planned and executed the attacks of September 11, and, indeed, other terrorist acts. In order to achieve this goal, we, unfortunately, must take off our civilized gloves and engage in some rude, bare-knuckled confrontations. These confrontations require different rules than those we habitually use, and these rules, in turn, require extra powers. I, for one, am prepared to grant them, although with reluctance and caution. However, and this is a big however, the powers we are granting to authorities in this bill cannot be given forever and cannot be given without appropriate vigilance. They cannot, as I said a moment ago, become the unchecked status quo.

To this end, I believe two amendments must be made to Bill C-36. The first one deals with oversight. The extraordinary powers this legislation gives the government, police and certain other agencies and departments need to be supervised. The temptations are simply too great to cut corners, to take unnecessary liberties and to hide unpleasant facts from public view.

If we will allow people to exercise powers like those contained in this bill, we need ways to police the police, so to speak. The way to accomplish this, as Senator Grafstein suggested in committee, is to appoint an officer of Parliament who will be independent from political interference or pressure from police and security agencies and the like, and who would be given the appropriate powers and authority to act as a public watchdog over the actions of those engaged in the activities authorized under this bill.

The second provision that must be added to this bill is a full sunset clause. At the end of a specified period — some honourable senators have suggested five years — the government of the day would have to come back to Parliament to explain once again, why, if indeed it were to be the case, it felt the act needed to be renewed. That would allow everyone, particularly parliamentarians, to debate the issue fully and publicly to see if indeed the government still needed the authority. The provisions of a sunset clause as proposed by Senator Lynch-Staunton would also be a warning to those who would abuse the system.

Without those two important fundamental amendments, honourable senators, I cannot in all good conscience vote for this bill.

Hon. Laurier L. LaPierre: I have now come to a crossroads that I did not know I would ever have to face. I have spent the greatest part of my life attempting to expand the margin of freedom for myself and for others. Yet I find myself, now 72 years old, confronted with the necessity of having to restrict that margin of freedom for myself and for others.

Senator Kinsella: Do not do it.

[Translation]

Senator LaPierre: Please do not put words into anyone's mouth. This is a very tragic time for everyone. It is not a simple question of politics. It is a profoundly moral issue and, for once in your life, be serious!

[English]

Honourable senators, I wish this bill were not here. I find it tragic, difficult and, above all, dangerous.

I am not one of those who think that September 11 is a new moment in the history of the world, because it is not. I do not think that the events of September 11 are more tragic than the millions of people who die everyday under terrorism. No one goes to guard them and kiss them. In the final analysis, countless people on this planet suffer terror. Americans are not suffering more; Canadians are not suffering more.

On the other hand, I am struck by a simple fact. Geography has imposed upon me a dimension of reality that few other people on the planet have. The dimension of reality is that my security, the security of my country and the prosperity of my country are, to a large degree, determined by what we will do over the next few months.

I do not agree to be caught into the vortex of hysteria, paranoia and the astonishing claims that have been made by virtually everyone from President Bush down, that this is the greatest evil we have ever faced. Millions of Jews died not so long ago within our memory, and that was a greater calamity than the one I face now. However, I am stuck at where to find balance in this astonishing thirst and hunger for the widest possible margin of freedom and the security that my grandchildren must have in order to grow to my advanced age.

I have looked at this bill, and I would have preferred that the first report of Senator Fairbairn's committee had been accepted. I must face the fact that it was not and that at the end of the day, I will have to accept this bill, even if I vote against it, even if I accept the 10 or 12 amendments proposed and so ably defended by the people who have already spoken, who will in the future, and whom I respect. I will still have to face living with the bill.

I ask myself this: How can I, after the bill has been passed, make it even better? Vigilance is the price of liberty, but taking risks is the price of democracy, and in the name of democracy I shall take a risk. I do not think that Mr. Chrétien, any more than Mr. Clark or Mr. Day or any other political leader, is an evil person. I do not think they have anything to gain by this bill. I only can trust, and I know that they are doing what needs to be done in the light of the dimension of the reality in which they feel their responsibility binds the Canadian people. I accept that. I will take the risk to trust them.

However, I should like, honourable senators, for us to take very seriously that there is no ombudsman and that the sunset clause will be here only for two of the most important stipulations in that bill.

• (1600)

I do not feel totally satisfied by the reports that are to be given to us, prepared by the people mostly concerned by them. I am not overwhelmed by the advisory committee that has been suggested by the Fairbairn committee, nor am I satisfied that the money will be there to teach the police how to educate themselves. There should be penalties in the bill for those who abuse their power in the exercise of the stipulations of the bill.

What I want us to do — honourable senators will forgive me; I am your youngest son — is to act as ombudsmen. Let us not forget that we will not only change this at the end of the day. We may satisfy ourselves in our intellect and our sense of emotion and democracy. I do not disabuse myself on the value and the purposes of these amendments. Why can the Senate not become the ombudsman of what will be after this bill is passed?

People say to me that the Senate is irrelevant. In the thousands of e-mails that I have received, they say, "What are you old men doing? You are irrelevant. Why do you not go home?"

Honourable senators, I want us to be relevant now in the process of becoming the guardians of the liberties of the Canadian people. I want us to admit, rather solemnly, that the

Senate shall be the ombudsman of this bill, that we in this chamber will not be satisfied with self-serving reports. Although I do not understand the rules well enough to know how to do this, I should like us to form a committee or do whatever is necessary to become the instrument that holds in the light of the day the conscience of those who govern Canadians.

We have the power to do that, honourable senators. We have the power to alter significantly the life of this bill. We have the power to protect my friend here and her people who have been abused — I have seen it — since September 11. We have the right and the power to supervise the application of this bill. We are the guardians of the liberty and the freedom of the Canadian people. We can maintain the balance that exists between security and freedom.

Hon. Marcel Prud'homme: Honourable senators, I have a question for the Honourable Senator LaPierre. I find it extraordinary that we find ourselves with such opposite views and yet we expect the same end result.

The Hon. the Speaker *pro tempore*: Honourable Senator Prud'homme, I am sorry, but are you asking a question?

Senator Prud'homme: Yes.

The Honourable Senator LaPierre has said in his speech that we must be guardians; we must be relevant. That is exactly what Senator Wilson has said.

[Translation]

I ask Senator LaPierre to believe me when I say that the best way of being guardians, the best way of being relevant, in fact, is sometimes, in very important cases, to not be afraid to take a stand that is contrary to that of the House of Commons.

Honourable senators, Senator LaPierre is full of good intentions and possesses many virtues, even his great desire to become this guardian, but he will find himself unable to do so if he does not have the leadership of the government behind him. We can become the guardians and intervene, but we cannot do so without the backing of the government. I would like to hear Senator LaPierre's comments on this point.

[English]

Senator LaPierre: Honourable senators, I admire what the Honourable Senator Prud'homme has done. I admire the great courage that he has had all of his life in advocating causes that are not very popular. However, I find myself today not needing a crutch of any kind.

No doubt he is right in saying that I will not get anywhere as a guardian unless the government is on my side. However, I hear everyone in this house saying that we must not be prisoners of the government or of the House of Commons. Consequently, this is what I am trying to say: stop being a prisoner of them and act. Stop taking refuge behind the cloaks of the government or the House of Commons. Do what you must do.

I am not talking about relevance here, honourable senators. I am talking about the willingness and the determination to protect the rights of the Canadian people, on our own, without the crutch of the government, without the crutch of the Leader of the Government or that of the Deputy Leader of the Government or that of the Leader of the Opposition. Act on your own dignity and your own power. That is what I am talking about.

Senator Stratton: I want to see how you vote tomorrow.

Senator LaPierre: Honourable senators, with all due respect, I find that highly immoral. We vote by conscience here, sir. I will vote for this bill because I have thought about it for a long time. The Honourable Senator Stratton ought to keep his mouth shut. Thank you very much.

Hon. Terry Stratton: Honourable senators, I have let the Honourable Senator LaPierre get away, today, with swearing in this chamber again. I want that swearing on the record and I want his apology for that swearing now.

Senator LaPierre: Honourable senators, if I swore, I apologize.

Hon. Douglas Roche: Honourable senators, the representations I have received opposing Bill C-36 concern me greatly. A friend wrote to me to say that his long experience has instilled in him "a deep suspicion of security measures to safeguard liberty and democracy."

Larry R. Shaben, President of the Muslim Research Foundation in my home city of Edmonton, wrote to complain that the powers being given to the government under Bill C-36 "...are clearly being enacted to initially target Muslims." He added, "Next the target could be Jews or Asians or Aborigines."

The Sisters of Charity in Calgary urged me to try to stop the bill because they claim there is no provision for an overseeing agency to have the authority to overrule the security forces. The Ukrainian-Canadian Congress said the bill is "...an affront to all Canadians who are proud of our way of life and cherish our civil liberties," adding that the Senate "...is being intimidated into passing this terrorist bill quickly."

These are just a sampling of the comments that I have received. Clearly there is great concern in the public. The question I have asked myself is: Is this opposition to Bill C-36 justified? Should the bill be stopped?

• (1610)

I followed the testimony before the Senate committee as best I could. Frankly, I have tried to reach a conscientious answer in the resolution of the great conflict between assuring security from terrorism and not violating civil rights and liberties.

I am conscious of the admonition of the UN High Commissioner for Human Rights, Mary Robinson, who said that governments must refrain from any excessive steps that would violate fundamental freedoms and undermine legitimate dissent.

I believe that history will record that what happened on September 11, 2001, was a watershed moment for humanity. On that day, we learned that the global security agenda became a human security agenda, and that no one, anywhere, was inviolate against terrorists in their own community, turning everyday means of transportation into weapons of mass destruction. On that day, it was driven home that terrorism has developed into a sophisticated network of political, economic and technical collusion which goes beyond national borders to embrace the whole world.

In fact, September 11 brought the world into a new paradigm. That was the word used by law Professor Errol P. Mendes of the University of Ottawa when he appeared before the Senate committee. I think the word is apt. I agree with him when he says that we have to use our wisdom to meet this new paradigm, "without allowing it to overwhelm our fundamental values of human rights, equality and multiculturalism."

Some of the responses to the new paradigm, such as the relentless bombing of Afghanistan, are wrong. I have said so many times in this chamber. My heart continues to go out to the countless innocent civilians in Afghanistan who have been killed, maimed or displaced by the bombing campaign. Canada has a responsibility to work to bring terrorists to justice without inflicting a parade of death and destruction on the innocent.

Other responses to the new paradigm, such as the roundup of many Muslims in the United States and the creation by presidential order of military tribunals to try and execute non-citizens in secret by majority vote, are also wrong.

Canada must not follow the U.S. response in which the rights of freedom are denied in order to attack terrorism. However, the part of the Canadian response to the new paradigm found in Bill C-36 is of another order. Though it may not be palatable, it is necessary. When terrorist organizations use their own followers as weapons to be launched against defenceless and unsuspecting people, it becomes necessary to build into society a right to defend oneself against terrorism. Terrorist activities in our country must be able to be identified before violence takes place.

Anyone who doubts this has not read UN Security Council Resolution 1373, adopted unanimously on September 28, 2001. This is a remarkably tough resolution, which makes strong demands on all states. The resolution orders states to prevent and suppress the financing of terrorist acts and freeze all funding thereto; deny safe haven to terrorists and prevent their movement by effective border controls; take appropriate measures in conformity with national and international law before granting refugee status; and strengthen coordination to stop transnational organized crime and the illegal movement of nuclear, chemical, biological and other potentially deadly materials and other measures. Under Resolution 1373 states are to report to the UN by December 28, 2001, on the steps they have taken to implement these measures. Resolution 1373 is the parent of Bill C-36.

Does Bill C-36 exceed the demands of Resolution 1373? That may be a judgment call. However, it cannot be denied that the Government of Canada responded to widespread apprehensions, including from the special Senate committee, that it had gone too far in the original bill, and it made important amendments. It is the amended bill that was passed in the House of Commons and which is now before the Senate. However, much of the criticism I am receiving is directed against the original bill and does not take account of the changes that have been made.

The definition of terrorist activity has been tightened to ensure that the focus is on the intended terrorist evil rather than the lawfulness or unlawfulness of the act that underpins it. Work stoppages, even if illegal, will not now be considered terrorism.

Preventive arrests and investigative hearings, two potential invasions of civil rights, have now been circumscribed. Before a police officer can arrest a person on suspicion of terrorist activity, the written consent of the Attorney General must be obtained. The detention after arrest must be subject to judicial review within 24 hours. Also, investigative hearings cannot be held without the prior consent of the Attorney General. Moreover, the Attorney General would be required to table annual reports in Parliament detailing how powers like the preventive arrest ones are being exercised. Both the preventive arrests and investigative hearings provisions now include, albeit weak, five-year sunset clauses, after which time they would have to come again before the House and the Senate.

It is important to note that a non-discriminatory provision has been included to ensure that political, ideological or religious expression cannot, by itself, be considered terrorist activity. Thus, visible minorities should not be singled out for differential discriminatory treatment. On this point, the Liberal majority in the Senate committee made an important observation in urging the government to enable minority groups to share in ongoing training to make security officers sensitive to the ethnic diversity of Canadian communities.

In their contribution to the observations of the committee, Progressive Conservative senators have continued to call for the application of a sunset clause to virtually all parts of the bill. I support Senator Lynch-Staunton's amendment.

Progressive Conservative senators are also calling for the appointment of an officer of Parliament to monitor the exercise of powers under this bill. The government does not want such an officer. However, the oversight mechanisms and review processes built into Bill C-36 are substantive; and, as Senator Carstairs said two days ago, it would be logical for the Standing Senate Committee on Human Rights to take on the responsibility of also reviewing the implementation of this important bill.

Finally, honourable senators, there remain two short points to make. First, Bill C-36 does not operate outside the Charter of Rights and Freedoms that is a hallmark of Canada's dedication to preserving civil liberties. Comparing Bill C-36 to the War Measures Act, when there was no Charter, is not valid. We must continue to put our faith in the judicial enforcement of the

Charter of Rights and Freedoms. It is a near certainty that Bill C-36 will end up in the Supreme Court of Canada — and that is yet another safeguard.

Second, and here I return to the new paradigm, Canada is a vast geographical area adjacent to the United States, the most powerful country in the world, which has already suffered the massive attacks of terrorism. Canada cannot afford to become, or be seen to become, a staging ground for future terrorism directed at the U.S., let alone ourselves. Our economy, our trade, our way of life, depends on ready access to the U.S., and Canada must give assurance to the U.S. that future terrorists will not be spawned inside Canada.

Moreover, the UN Security Council commands us to take stringent steps.

• (1620)

Bill C-36 takes these steps without undue undermining of civil rights and liberties. Canada's ability to respond to the new paradigm with the building of a stronger body of international law requires us to ensure that Canada itself is secure.

Hon. Joan Fraser: Honourable senators, I had prepared some more general remarks about this bill. However, I should like to address first Senator Lynch-Staunton's amendment and, second, the proposal from Senator Di Nino.

I speak as a member of the Special Senate Committee on Bill C-36 whose pre-study report recommended a general sunset clause. It is true that the committee recommended that in its report. However, I must tell honourable senators that I did not believe then in a general sunset clause, and I still do not. In fact, I believe in it even less now.

Sunset clauses are not part of our parliamentary tradition. They are an import from the United States. They probably make some sense in the United States where Congress is such — I am trying to think of a more complimentary word than "undisciplined" — a freethinking body that it is difficult to focus its attention on any one topic unless there is an emergency, such as the actual expiration of legislation. Hence, sunset clauses may be useful in the U.S. context. I do not think that is the case in our system.

I think that sunset clauses have the serious potential to be pernicious in their effect, and here is why. It was summed up, although this was not his intention, by an honourable colleague who said this several times during our deliberations, "I do not care what you do with the bill. I do not care what the bill says as long as it has a sunset clause." That is about as dangerous an approach as it is possible to have.

If you have a general sunset clause there is a natural tendency to say, "I will think about what may be right or wrong with this legislation five years down the road. We are all busy. We have other things to do. We will think about it when the sunset day arrives, so we will let it go until then." However, in the five-year interim period, heaven knows what abuses may be committed in the name of heaven knows what principles.

I thought it was more important to build into every portion of this bill as many safeguards as possible: safeguards in terms of the actual phrasing of the law, safeguards in terms of the processes that were set down, safeguards in terms of guaranteeing due process at law, safeguards in terms of guaranteeing adequate information to the public. In my view, all of those safeguards will be far better safeguards of Canadians' liberties than any sunset clause could ever be. They are all now in the bill.

Senator Roche has just reminded us of the degree to which this version of the bill differs from the one that was before us at pre-study. I have just mentioned the safeguards. We have better definitions of "terrorism" and "facilitation." We have guarantees that the minister's certificates will expire and, before that, we will know they exist because they will be published in the *Canada Gazette*. The roles of the Privacy and Information Commissioners have been restored. Appeals have been built in; due process has been built in. The ability for Canadians to have access to the courts at every stage of every part of this bill has been built in.

If I did not think we needed a sunset clause at the pre-study stage, I certainly do not think we need one now. However, we do have a sunset clause affecting the bill's two most dramatic departures from what are traditional practices in this country; that is, the clauses affecting the establishment of investigative hearings and preventive detention.

Senator Kinsella: Did you vote for the report?

Senator Fraser: I did not vote for it in committee, honourable senators, and I was absent from the Senate at the moment the report was voted on.

Senator Kinsella: But you will be voting against these two sunset clauses in the bill?

Senator Fraser: No, I was about to say that I can understand why those sunset clauses might be useful and why they might give some reassurance to Canadians. I do not think they will do any harm because of the safeguards that have been built into the process.

However, I think a generalized sunset clause would be a very bad idea. I shall vote against Senator Lynch-Staunton's amendment not just because I sit as a Liberal but also because I believe that it would be the wrong way to go.

I wish to address Senator Di Nino's suggestion that we need a parliamentary officer. This was part of the pre-study committee's report and I did vote for that recommendation. At the time I thought that it sounded like a very interesting and perhaps useful idea. However, when we came to study the bill, testimony presented to the committee has persuaded me that I was wrong — for two reasons.

The first and less important reason is that, as the Privacy Commissioner pointed out to us, you would be likely to get turf squabbling among existing federal officers of Parliament. That would undoubtedly occur and would not be particularly helpful to the greater cause of the public interest. That in itself was not enough to persuade me that it was not the way to go; rather, it was the federal-provincial argument that persuaded me that an officer of Parliament was not the appropriate way to go at this time.

A great portion of this bill will depend on the provinces for its implementation. The provinces are constitutionally responsible for the administration of justice, and our largest provinces have their own police forces that will be charged with the implementation of much of this bill. Provincial governments do not take lightly, as we have learned, the matter of the Senate establishing oversight mechanisms that will intrude in their jurisdiction.

Even that might not be enough reason to vote against establishing an officer of Parliament, should an amendment proposing one be put in front of us, if there were still no other way of finding out what the provinces will be up to under this bill. However, we will be told what they will be up to. The Minister of Justice has won federal-provincial agreement so that all provinces will provide a wealth of information about their activities under the investigative hearing and preventive detention provisions, the ones that rightly have concerned so many of us a great deal.

Discussions are continuing with the provinces now about ways to provide information that goes beyond bare data to provide qualitative analyses of the work that will be done as this bill takes effect. The desire is to include input from Canada's minorities so that, as the qualitative work goes forward, it will tell us how our minorities are living with this legislation in place and what has been happening to them, which we all agree is something about which we will need to be very watchful.

Ensuring that there is cooperation is far better than launching into a traditional federal-provincial battle over jurisdiction. While federal-provincial battles over jurisdiction are entertaining for lawyers and great fun for people who like political fights, they do nothing to help the Canadians whose interests we are here to protect. Therefore, I will vote against establishing an officer of Parliament, should such an amendment be proposed.

• (1630)

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I have a comment. Senator Fraser has repeated what we have heard elsewhere, which is that a sunset clause is not in the parliamentary tradition. She said that if we were to adopt a sunset clause, it would be an import from a totally different system of government where its uses may be found necessary, whereas in our case, because we have the British parliamentary system, it is not found to be part of that tradition.

I should like to remind Senator Fraser and others who share in that canard there was an equivalent bill to this bill in the debates of the House of Lords called the Anti-terrorism Crime and Security Bill. The House of Lords made 70 amendments to the bill, and the House of Commons agreed to 20 of those amendments. One of the amendments was to introduce a sunset clause. I will not read it, but I would be glad to send Senator Fraser the appropriate documentation. It was a sunset clause with various deadlines, depending on the clauses. In some cases it was only one year, in other cases it was five years and in other cases it was two years. The House of Lords felt it appropriate that, depending on the clauses, the sunset clauses would have various expiry dates.

If the British House of Lords finds that in its tradition a sunset clause is perfectly proper, I think that we who base our system on the British system should be quite comfortable in introducing one here also.

Senator Fraser: I thank Senator Lynch-Staunton for his comment. It is my understanding that the British bill, which has been given such trouble in the House of Lords, went much further and was far more stringent and alarming from the point of view of civil liberties than our bill. An expert who appeared before us at pre-study said that even in the pre-study version of the bill, what we were considering was closer to what Britain already had and that Britain was going much further down the road with its new legislation than we wanted to go.

Perhaps the recalcitrance of the House of Lords becomes more understandable. I would remind honourable senators that we have a Charter of Rights to which every word in our bill is subject, and the British, of course, have no Charter of Rights.

Senator Lynch-Staunton: Honourable senators, I am sorry, but the British have had the European Bill of Rights for some time, which I would urge the honourable senator to read.

[Translation]

Hon. Pierre Claude Nolin: My question is for Senator Fraser. If I understood her correctly, her first argument is that a clause resembling the one found in Senator Lynch-Staunton's amendment would have an adverse effect, in that the sunset clause could lead people to forget the notion of protecting fundamental rights, given the clause's peremptory time limit.

In the body of the first paragraph of the motion in amendment, there is specific reference to the fact that the provisions would cease to be in effect after five years or any earlier date fixed. I will read the first paragraph of Senator Lynch-Staunton's motion in amendment, as found on page 3 of today's Order Paper:

147.1(1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

[Senator Lynch-Staunton]

This means that the government can decide by order that after six months, certain clauses, or the entire act, would cease to be in effect. Does Senator Fraser see it the same way?

Senator Fraser: My comments on the sunset clause were more general. I am not in favour of them. When it comes to allowing the government to modify or abolish a clause when it sees fit, our parliamentary system already gives the government the power to do so at any time. We do not need a sunset clause to do this.

Senator Nolin: If an act sets out a time period in which the act is valid and does not authorize the Governor in Council to terminate it before that time period has expired, even if the government wishes to do so, it will have to come before Parliament in order to obtain such authorization. I hope that the honourable senator agrees with me on this.

The government has many powers, but it certainly does not have the power to exceed a power that it has not been given. Does Senator Fraser agree with me?

Senator Fraser: Obviously, but I do not believe that that is what I said.

Senator Nolin: Senator Fraser said that the government can abolish a part of the act because it has the power to do so. It does not have this power unless the act grants it this power.

Senator Fraser: Senator Nolin will have to excuse me, but I was referring to the normal context in which a majority government, with good reason, can convince a majority of Parliament to vote along these lines.

Senator Nolin: Fine, I understand.

[English]

Hon. David Tkachuk: Honourable senators, I have a question for the Honourable Senator Fraser.

The Hon. the Speaker: I am advised that Senator Fraser's time has expired.

Hon. A. Raynell Andreychuk: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Andreychuk, seconded by the Honourable Senator Johnson, that further —

Hon. Sharon Carstairs (Leader of the Government): No.

The Hon. the Speaker: I received a motion from Senator Andreychuk that debate be adjourned. It is not a debatable motion, but it is a votable motion. I have started to put the question and I am obliged to finish.

It is moved by the Honourable Senator Andreychuk, seconded by the Honourable Senator Johnson, that further debate be adjourned to the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Accordingly, there will be a standing vote. Please call in the senators. There will be a one-hour bell, unless there is agreement for another period.

Hon. Bill Rompkey: Honourable senators, I suggest a half-hour bell.

Senator Stratton: No agreement. One hour.

The Hon. the Speaker: There is no agreement. Call in the senators.

• (1740)

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Murray
Buchanan	Nolin
Carney	Prud'homme
Comeau	Rivest
Di Nino	Roche
Gustafson	Spivak
Johnson	Stratton
Kelleher	Tkachuk—23
Keon	

NAYS THE HONOURABLE SENATORS

Austin	Hubley
Bacon	Jaffer
Banks	Kirby
Bryden	Kroft
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Mahovlich
Cook	Milne
Corbin	Moore
Cordy	Morin
Day	Pearson
De Bané	Pépin
Fairbairn	Phalen
Ferretti Barth	Poulin
Finestone	Poy
Finnerty	Robichaud
Fitzpatrick	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Gill	Taylor
Graham	Tunney
Hervieux-Payette	Wiebe—48

ABSTENTIONS THE HONOURABLE SENATORS

Joyal
Watt—2

The Hon. the Speaker: Honourable senators, we will now resume debate on Bill C-36 and the amendment of Senator Lynch-Staunton. I last recognized a senator on the side of the opposition. My practice, although I do not always follow it strictly, is to alternate between the two sides. I now look to the government side.

Senator Prud'homme: Honourable senators, before His Honour proceeds, could he please advise those of us at the very end of the chamber. We do not challenge his fairness, but, if I remember well, I think the senator who asks for the adjournment of the debate, even though the adjournment is refused, should be given priority if she or he wishes to speak. I am in His Honour's hands.

Some Hon. Senators: No!

Senator Prud'homme: Oh, honourable senators, stop shouting. Learn the rules. For those who do not know them, His Honour will explain. Stop shouting or I will be shouting a lot during this long night tonight.

Honourable senators, I always abide by His Honour's rulings, by his intelligence and his "savoir faire." How far out am I in my interpretation of the rules?

The Hon. the Speaker: Honourable senators, Senator Andreychuk had an opportunity to speak and moved adjournment of the debate. I take it she does not wish to speak now. I have risen and indicated to the chamber where we are on the Order Paper. The next thing for me to do is to ask if the house is ready for the question.

Some Hon. Senators: Question!

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): On a point of order, I think we are almost all there. The practice of debate going back and forth to which His Honour has alluded is one with which this side finds great sufficiency. If there is no speaker on the other side, then I am sure the Honourable Senator Andreychuk will be pleased to participate in the debate. We agree with His Honour that this is the tradition. The indication from the government leader is that the other side has no one to speak.

Senator Andreychuk: Honourable senators, to clarify, I would yield to another senator.

Senator Carstairs: We wish to hear from the Honourable Senator Andreychuk.

Senator Andreychuk: Honourable senators, I rise to speak to Senator Lynch-Staunton's amendment to Bill C-36. I wish to support the comments of Senator Lynch-Staunton, Senator Kinsella and the deputy chair of the special committee on anti-terrorism, Senator Kelleher, in support of the amendment.

In order to shorten the time of my remarks, I would ask senators to take into account the comments I made in response to Senator Stratton's inquiry on Monday of this week, together with my questions and observations following Senator Carstairs' speech.

First, I should like to dispel some myths that cloud our understanding of Bill C-36 and the need for this amendment. In the Liberal senators' observations to Bill C-36, I think it is unfair and inaccurate to state that the government was forced to address the threat of terrorism in North America after September 11, 2001. In fact, the government knew about terrorism long before September 11 because the Special Senate Committee on Security and Intelligence in its report of January 1999 noted the type of terrorism espoused by bin Laden and al-Qaeda and the threat they posed to the North American continent.

In addition, bin Laden specifically was identified in the report and other terrorists were identified, both through the Senate report and from public statements made by CSIS. There is ample evidence for Canadians to be aware and to take some comfort from the fact that that was before September 11. Under the authorities provided in our present law with respect to national security, and a whole host of other legislation, people were being detained and are today being detained as national security risks, including those suspected of having some link to bin Laden.

I state again that what was lacking were sufficient resources and some coordination at the Privy Council Office or at the Prime Minister's Office with respect to national security. To say that this issue of terrorism affecting North America came after September 11 does not jive with government records. The government had been taking steps and the administration had been taking steps.

Since September 11, authorities have received more resources, particularly for border scrutiny and with the overreaching provisions of the Immigration Act, Bill C-11, and there has been action. Canadians should not be asked to believe that nothing is happening today.

A second myth in the observations of the Liberal senators is that security itself is a precondition to liberty. I would point out that senators' speeches made pursuant to Senator Stratton's human rights inquiry on Monday and other speeches made in this chamber will show clearly that the right to security and other individual rights and freedoms all must have weight. One does not wipe out the others.

Nations, in providing security for citizens, must balance other rights and freedoms. It is not a precondition case, but a question of proportionality as has been stated again and again. In fact, Professor Monahan has been quoted here several times. When he came before the committee, he started out indicating that security is a precondition to liberty.

• (1750)

In his testimony, Professor Monahan said that if you do not have good security, you do not have liberties. He went on to say that there comes a point when, if you have only security, you have no liberties, and that in every case it is a question of looking at the circumstances and the balance. That is how I understood his evidence.

In fairness to Professor Monahan, let me say that he clearly understood the proportionality. He gives great weight to security, as many of us do in these times of crisis, but he does not rule out the need to have the proportion of balance.

Honourable senators, I want to underscore again that immigrants who come to Canada, and many who form minorities — and often, today, visible minorities — overwhelmingly are people who are grateful for the opportunity to live in Canada and with great zeal go about the business of becoming responsible Canadian citizens who are proud of this country and the advantages it has given them. One needs only to go to any minority community, in its associations, in its churches, mosques and synagogues. Emotional praise is often given for the right to be on Canadian soil.

Honourable senators, make no mistake that the process of integration is difficult and sometimes fraught with misunderstanding, prejudice, discrimination and, sometimes, downright hostility. Blending one's own culture into the milieu of Canada is in itself an overwhelming but commendable task.

When terrorism or some other horrific act raises the need for more security for Canadians, it always seems to profile a segment, however small, of a minority community, and an entire minority suffers the fallout. While it may not be the intention of the government or the laws of the time to do so, history has shown us that the application of the laws and the sign of the times, in fact, do just that.

In a country like Canada, we must profit from our mistakes of the past. One senator in the committee indicated that we would never repeat the mistakes of the First and Second World War. I do not accept that. While we may not use the same methodology, Canadian history has pointed out repeatedly that when the country feels threatened, governments have not acted with a measured hand but a heavy hand. That is why Parliament is necessary as a levelling force. The tools of government increase, and often the tools of the individual diminish.

Honourable senators, to make my point, I wish to quote from a book entitled *Park Prisoners*. Professor Bill Waiser, at page 6, when speaking of internees who were technically prisoners of war in the First World War, stated the following about the situation:

The coming of the war compounded the men's plight and also caused their numbers to swell. Immigrants from Austria-Hungary — already scorned for their language, religion and habits — now faced the added stigma of being enemy aliens and were dismissed from their jobs in large numbers for patriotic reasons. Many had been in the country for only a few months. It was an ironic twist of fate that almost half the record of 400,000 immigrants who had entered Canada the year before the war were from central and southern Europe.

He goes on to say:

With the outbreak of the war, the Canadian public grew increasingly alarmed about the presence of these men in their midst. Any peacetime toleration of these immigrants was now overridden by concerns about their nationality and loyalty. And it is easy to see why they were feared. Since these migrant workers had no intention of remaining in Canada, most had not bothered to become naturalized and hence were still citizens of their home countries. Many were still classified as reservists in the Austro-Hungarian army. In their search for work, these men also travelled to and from the United States, an unfortunate pattern since it was widely believed at the beginning of the war that American-based subversives posed the greatest security threat to Canada. As a result, Austro-Hungarian workers became objects of suspicion and paranoia, and the federal government was inundated with demands to do something about them, along with other persons of enemy nationality. Close surveillance revealed, however, that Canadians had nothing to fear from these people. Colonel A.B. Perry, commissioner for the Royal Northwest Mounted Police, said as much when he

advised Ottawa in late February 1915 that he had discharged all but one of "our high-priced Secret Service Agents," including the man disguised as a barber in Edmonton, who had been hired by the force at the beginning of the war to infiltrate the immigrant community. "The closest investigation," Perry reported from Regina, "has not revealed the slightest trace of any organization or concerted movement amongst the alien enemies." As far as the commissioner was concerned, public fears about these people seemed to be groundless; his men had yet to discover a single case of sabotage. This assessment of the situation in western Canada was echoed in the House of Commons one year later by William Martin, a Saskatchewan MP and future premier of the province, who calmly observed in response to heated calls for increased vigilance, "I am...inclined to look upon these people...as being entitled to a certain amount of consideration."

Honourable senators, the actions that we took at the outbreak of the First World War were not isolated. We repeated, as Senator Lynch-Staunton has pointed out, the same mistakes in the Second World War and in the FLQ crisis. Has our memory faded as to the Communist threat and some of the excessive investigations there? While we were investigating Canadians for threats of Communism here, Stalin went unchecked by the Western media and the main Western governments.

What is the message here? We cannot, if we are to progress as a nation, continually jump to the conclusion that anyone who shares the same background, religion or political or ideological beliefs is a terrorist. The mere fact that Osama bin Laden professes a belief in a certain Islamic faith should not tar everyone who professes the same beliefs. Just because some of the terrorists who perpetrated the atrocity of September 11 came from Egypt, Afghanistan or Pakistan should not mean that all immigrants from those countries should fear being included in the same assessment, if we have learned from the past.

While we have changed our modalities and even refined our laws, the undercurrent of being less than measured against a minority in our search for security for the majority cannot continue because the price that the minority is paying for our security and theirs is more than the average Canadian will have to suffer. Therefore, we should be very measured and not create more tools than are necessary, or, if we create these tools, we should continuously have the proper oversight to ensure their proper implementation.

In our representative democracy, Parliament grants these tools, not the government. Parliament must be the double-check over the executive. The tendency to ask for more tools by police and government is constant through criminal law. The measured approach in granting them is the responsibility of Parliament.

In a time of crisis, we cannot say that we will give blanket trust to our government and that that is our only option. This Parliament must maintain its role.

Further, we must remind ourselves that when we take these actions the effect in minority groups lasts a very long time. It is of small comfort to Canadians of Ukrainian descent in 2001 that they are still asking for the recognition of improper internment, knowing full well that the apologies requested for such internments are small comfort for the decades of harmful effects they have felt as Canadians. People of Japanese heritage, Italian heritage and others will give you the same comments, not to mention the Chinese and the head tax.

• (1800)

Second, it is not just Bill C-36 in isolation.

The Hon. the Speaker: I am sorry to interrupt, but I must now draw the chamber's attention to the clock. It is six o'clock.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would be agreeable to not seeing the clock so that all senators may have an opportunity to express their views on the items on the Order Paper.

[English]

The Hon. the Speaker: Is it agreed, honourable senators?

Senator Kinsella: I do not know. What are we being asked to agree to?

The Hon. the Speaker: Senator Robichaud has asked if there is agreement that we not see the clock to give Senator Andreychuk an opportunity to complete her remarks.

Senator Kinsella: We will see the clock and come back at eight o'clock.

The Hon. the Speaker: There is no agreement, honourable senators. The rules are clear. I will read the specific rule if honourable senators wish, but I now must leave the Chair. We will resume the sitting at eight o'clock.

The sitting of the Senate was suspended.

• (2000)

At 8 p.m. the sitting of the Senate was resumed.

The Hon. the Speaker: Honourable senators, the sitting is resumed. Senator Andreychuk has the floor.

I am obliged to advise the Honourable Senator Andreychuk that her 15 minutes have virtually expired. The honourable senator has less than one minute remaining of her allotted time.

Senator Andreychuk: Honourable senators, I wish to make a second point. It is not just Bill C-36 in isolation, but Bill C-36 in combination with the effects of being an immigrant, with the

effects of being a minority, with the effects of the immigration law, the national security law and all the other pieces of legislation that make the broad sweeping powers in Bill C-36 so difficult. The added unnecessary definition of terrorist activity, including an element of political, ideological and religious connotation, together with broad sweeping powers, lack of access to full information and lack of the normal due process should make every Canadian want the government to be scrutinized and Parliament to assert its responsibilities.

The Hon. the Speaker: I regret to inform the Honourable Senator Andreychuk that her time has now expired.

Is leave granted for the honourable senator to continue?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: I am sorry to inform the honourable senator, but leave has not been granted for her to continue.

Senator Nolin: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Is there an agreement as to the ringing of the bells?

Senator Rompkey: I propose a half-hour bell.

Some Hon. Senators: No.

The Hon. the Speaker: If there is no agreement, it is a one-hour bell.

• (2100)

Motion negated on the following division:

[Senator Andreychuk]

YEAS
THE HONOURABLE SENATORS

Andreychuk	Keon
Atkins	Kinsella
Beaudoin	Lynch-Staunton
Bolduc	Murray
Buchanan	Nolin
Comeau	Rivest
Di Nino	Spivak
Gustafson	Stratton
Johnson	Tkachuk—19
Kelleher	

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Kirby
Bryden	Kroft
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Mahovlich
Cook	Milne
Corbin	Moore
Cordy	Morin
Day	Phalen
Fairbairn	Poulin
Ferretti Barth	Poy
Finestone	Robichaud
Finnerty	Rompkey
Fitzpatrick	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gill	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wiebe—44

ABSTENTIONS
THE HONOURABLE SENATORS

Joyal
Roche—2

[Translation]

Senator Nolin: Honourable senators, I am pleased to speak to the amendment proposed by Senator Lynch-Staunton.

Honourable senators, in order to ensure continuity in the line of thought developed by your colleagues on this side, I will continue my remarks in the language of Shakespeare, in the hopes of doing honour to the quality of the text prepared by Senator Andreychuk.

[English]

Just to make sure that honourable senators can follow along properly, I will start a few paragraphs back.

Second, it is not just Bill C-36 in isolation, it is Bill C-36 in combination with the effects of being an immigrant, with the effects of being a minority, with the effects of the immigration law, the national security law, and all of those other pieces of legislation that make the broad sweeping powers in Bill C-36 so difficult.

The added unnecessary definition of terrorist activity, including an element of political, ideological and religious connotation together with broad sweeping powers, lack of access to information, and lack of the normal due process, should make every Canadian want the government to be scrutinized and Parliament to assert its responsibility.

A further issue that makes the amendment all the more important is the fact that the exercise of power and authority by police, CSIS or governments in new and broad ways should give every Canadian pause for concern.

Senator Andreychuk wanted to draw our attention to two witnesses who testified before the Standing Senate Committee on Legal and Constitutional Affairs on December 5, 2001, in the committee's investigation of Bill C-15A. In Bill C-15A, there is an amendment to section 690 of the Criminal Code, which concerns the miscarriage of justice.

Within that context, Mr. Melvyn Green, a board member of the Association in Defence of the Wrongly Convicted, and Ms Dianne Martin, Professor at Osgoode Law School, from the Innocence Project, testified as to certain cases. I believe them to be the foremost authorities in Canada on this issue about people who get the full benefit of the law and its rules but yet are innocent after going through the entire process.

• (2110)

I asked Ms Martin:

Tell me honestly....If you look at the reason for the wrongful conviction or miscarriage of justice, what is the proportion of bad faith from whoever in the system compared to a real error that led to miscarriage? I want an open answer.

Ms Martin responded:

I am mulling on "bad faith." Police misconduct is involved in literally all, but deliberate police misconduct, deliberate in the sense of, "I know I am breaking the rules"?

Ms Martin goes on:

"I am breaking the rules, and I know I am breaking the rules, but I am doing it for a good reason."

She is speaking about policemen.

"The technicalities are preventing the truth from being found and a guilty person from being convicted, and, thus, my focus over here or my failure to pursue that is all justified."

I would say a very low percentage is true bad faith. It exists, but the occasion of someone saying, "I am going to frame an innocent person. Who cares who we convict? Just give me anybody, and I will get him convicted," is very low. The occasion of turning a blind eye to something that you should not, the occasion of burying things in files or losing the exhibits, the occasion of putting pressure on a forensic scientist who is weak to improve their opinion, the occasions of saying to an eyewitness, "You're sure, aren't you? You don't want to look stupid in the witness stand, do you? The defence will ask you tough questions, so let's bolster you up," is remarkably common.

Mr. Green answered:

If I may, I share that view. Ms Martin is speaking about what is called in the literature "noble cause corruption," and it is common. It is a different kind of bad faith. It is good faith-bad faith, or good ends-bad faith, as opposed to fitting someone up or framing someone in the classic sense that you see on American television every night. Most of the causes of wrongful conviction have been covered by the mistaken eyewitness's identification, material non-disclosure, recanting witnesses, jailhouse informants, junk science, that kind of thing.

When you couple those areas with prejudice, when you couple them with the particularly suspect nature of the accused in a case, in a case like Romeo Filion, for example, who was obviously not a pillar of the community at the time, when you couple them, very often, with the absolutely horrific nature of the crime that preys on the community and the desire on the part of the community to bring this process to closure and this is the only guy we have in front of us, the guillotine comes down, and it comes down on the wrong neck.

Senator Andreychuk said:

This has been very interesting. It is a long time since I have thought about some of these things from the old days of practice. You talk about noble cause corruption and how we get into these cases where we can go through the appeals and still end up with an innocent being wrongly dealt with in the end, in other words, not receiving justice but getting the full benefit of the system.

She invited the witnesses to speculate on Bill C-24 and Bill C-36. Quoting Mr. Green's testimony:

As Ms. Martin said, all of that is a recipe for the miscarriage of justice.

I did give some thought to Bill C-36 with Mr. Green's responses.

As I looked through some of the provisions of that bill, and not having read it completely, I realized almost

immediately that there would be a tremendous risk of fresh wrongful convictions as a result of the licence that will be granted on the one hand to the police and as a result of what appears to be a relaxation of the accountability both at the pre-charge, investigator stages and, most important, perhaps, at the judicial stage. At that stage, there will be relaxed standards with respect to the admissibility and the quality of the evidence. There will be relaxed standards with respect to the scope of privileges that have been expanded in those fields and with respect to the limitations on the review of decisions made by judges. As Ms. Martin said, all of that is a recipe for the miscarriage of justice. Particularly, given our times, if I can simply put it that way, it will take courageous players in our criminal justice system, or our terrorist justice system as it will come to be characterized, to stand strong against the temptation to go with the tide and to protect the concerns on which this nation was founded, concerns that have given us a sense of who we are as a democratic people who we live in a society with values that we cherish. I do not want to grow rhetorical here.

The simple answer is that I have not thought about it in depth but that, yes, I did think about it and I thought, "Oh, my God, more work for AIDWYC."

That is the organization working with wrongfully convicted people.

Ms. Martin said:

I absolutely agree. You will remember that the great scandal of the wrongful convictions in the U.K. was the uncovering of the mistaken conviction of the IRA pub bomber. It was a climate of anti-terrorism that led to those flawed investigations, with judges turning a blind eye to those errors. Some 20 people were wrongfully convicted in order to address the fear that terror engenders. That is a lesson that we seem to have forgotten as we rush to open, perhaps, the same door. It is not that we do not have enough history to guide us, but it is apparently not guiding us at the moment.

Honourable senators, as Senator Andreychuk said previously in her remarks, there are two avenues we could take and they are, one, not to grant the powers that the executive is requesting, or two, we can certainly take steps as a responsible, mature Parliament to put in place the appropriate oversight and review of this power.

Senator Lynch-Staunton's amendment is the classic Canadian compromise. Take the powers and use them wisely and cautiously. We will review these powers, and if you, as a government, wish these powers in the future, you will simply need to bring forward legislation to that effect. There will have been the track record of necessity, and there will be an opportunity to adjust, to amend, to lessen, to increase powers that are absolutely necessary, but it will be a signal to those who may be affected that their fear can be eased and that we do not intend to repeat the mistakes of the past. We will be more thoughtful, more considerate and more responsive. It will mean that this is not a government that knows all but a government that takes steps to protect not only from terrorism but from excesses. A sunset clause is a noble answer.

• (2120)

[Translation]

Honourable senators, I am convinced that, upon reflection, you will come to the same conclusion that I did, namely that the amendment proposed by Senator Lynch-Staunton is necessary.

Allow me to tell you about the report that this house unanimously adopted during the pre-examination of Bill C-36, particularly about the provisions concerning the sunset clause.

Bill C-36 gives powers which, if they were abused by the executive branch or by the services responsible for Canada's national security, could seriously endanger democratic rights in our country. Even if we assume that these powers will be properly exercised, Canadians may well feel otherwise, and this could be as harmful to democracy as an actual abuse of power.

The committee was unanimous on this issue. It is well aware that we are going through a period of deep anxiety, fear and confusion. It is important that the deviations from our legal standards, which we are prepared to accept for a temporary period because of the current situation, be reconsidered as soon as we can look at the situation and evaluate it objectively.

[English]

The Hon. the Speaker: I regret to advise Senator Nolin that his 15 minutes have expired.

Senator Nolin: Honourable senators, I would ask for leave to continue.

The Hon. the Speaker: Honourable senators, is leave granted?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Leave is not granted.

Senator Tkachuk: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Is there an agreement as to the ringing of the bells?

Senator Rompkey: I propose a one-hour bell.

Senator Lynch-Staunton: One hour.

The Hon. the Speaker: Call in the senators.

• (2220)

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	Lynch-Staunton
Buchanan	Murray
Comeau	Nolin
Di Nino	Prud'homme
Gustafson	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—18.

NAYS THE HONOURABLE SENATORS

Bacon	Jaffer
Callbeck	Joyal
Carstairs	Kirby
Chalifoux	LaPierre
Christensen	Léger
Cook	Losier-Cool
Corbin	Mahovlich
Cordy	Milne
Day	Moore
De Bané	Morin
Fairbairn	Phalen
Ferretti Barth	Poulin
Finestone	Robichaud
Finnerty	Rompkey
Fitzpatrick	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gill	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wiebe—42.

ABSTENTIONS THE HONOURABLE SENATOR

Roche—1.

The Hon. the Speaker: Honourable senators, we will now resume debate on Bill C-36 and the amendment of Senator Lynch-Staunton.

Senator Tkachuk: Honourable senators, I rise today to support the amendment of Senator John Lynch-Staunton. I want to thank the whips for giving me that hour to compose myself after all those other speeches. As you know, I adjourned the debate so I would have time to prepare for tomorrow, but I had the hour and it was much appreciated.

The events of September 11 did change the world.

Senator Robichaud: This is a complete waste of time and the taxpayers' money.

Senator Lynch-Staunton: You should worry about that.

Senator Nolin: Could someone read him the Constitution, please.

Senator Tkachuk: I admit that now the Liberals think that democracy is a waste of time but we on this side of the house do not agree with that.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: We have a right to be here and to speak and to say our piece and not be rushed. So I will take my time, honourable senators.

The events of September 11 did change the world.

Senator Taylor: How many times have you got that on that piece of paper?

Senator Tkachuk: Senator Taylor, if I was not being so rudely interrupted by the likes of yourself on the other side, I would not have such a difficult time at this hour of night keeping my train of thought.

The economists and I both agree that what happened on September 11 did change the world and that the terrorists made a horrible mistake. The attack on the North American continent galvanized the United States of America. Under the leadership of President George Bush, they promised to act and they did. They will do something about this scourge of the earth. They have already, in a period of only a few short months, toppled a fascist, barbaric government, freed a nation and they are at the forefront of feeding that nation as the cold winter months approach. They are also holding together deftly under the leadership of President Bush and the likes of Colin Powell and Condoleezza Rice and a worldwide coalition to rid the earth of terrorism.

Honourable senators, I am not suffering from any emotional turmoil over my position on Bill C-36. I get my clarity from what I believe. I grew up in the constituency of John Diefenbaker who brought this country the Bill of Rights.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: I am supportive of the amendment brought by my leader, Senator Lynch-Staunton, to insert a true sunset clause in this bill. As I took my seat on the first day of hearings as a member of the Special Senate Committee on the Subject Matter of Bill C-36 — that is at second reading — I noticed there were new faces on the Liberal side. I saw Senator George Furey. I thought: Gee whiz, perhaps the Tobin forces had gotten control of the leadership.

However, I was brought down to earth when I saw Senator John Bryden of Pearson airport inquiry fame, a stalwart protector of Jean Chrétien since he had the unenviable task of making Jean look credible with the most infinitesimal pieces of information. Senator Poulin rounded out the replacements of the former first string of Stollery, Kenny and Bacon.

• (2230)

This is important for all of us to know because the first Fairbairn committee was very different from the second. The first committee on the subject matter heard testimony for a solid four days and made 10 recommendations for change, which were adopted unanimously by the Senate.

Senator Fraser said she was not here for the vote, and Senator Fraser, with all due deference, has only herself to blame for not being here to call division on the vote. Her colleagues unanimously supported the report that we all worked on, and it became an order of the Senate.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: I am no longer sure what a Senate order means. Simply put, it means that we all supported the recommendations. That is, until the Langevin Block and Eddie, a modern-day Rasputin of the Prime Minister, decreed that even though the Senate may order, the Langevin Block shall rule.

Honourable senators, I will read a few letters that I received and many of you also received. They are letters from ordinary Canadian citizens who have expressed concern to all honourable senators, and it is time that we put a few of them on the record of the Senate.

I am writing this letter to register my concern over the nature and content of Bill C-36, the Anti-terrorism Act, in spite of the recent changes to its composition announced this week. While a sunset clause has been established, it does not cover all of the new powers granted by the legislation. For those who consider Canadian democracy to be of the highest value this is sobering indeed. Neither are the protestations of the government that these new powers will be used judiciously reassuring. As history has taught us, the temptation to use power is often overwhelming and freedoms lost are terribly difficult to regain. The whole issue becomes even more disturbing when it is claimed by both the Canadian Bar Association and the Canadian Civil Liberties Association that the government already has enough power to deal with terrorist threats.

She quotes from the testimony of Alan Borovoy, General Counsel to the CCLA:

"As for the ability to conduct surveillance, the Canadian Security Intelligence Service, CSIS, is already empowered — with judicial warrants — to electronically bug conversations, surreptitiously search property, secretly open mail, and clandestinely invade confidential records. And, without such warrants, CSIS may target covert spies at people.

All of this intrusive surveillance is now potentially available to monitor what the act calls 'activities...in support of acts of serious violence...for the purpose of achieving a political objective within Canada or a foreign state.'

You have a choice to vote against this draconian bill as it now stands and thus preserve the gains in freedom and democracy that have taken centuries of blood and suffering to achieve (and sadly have not been achieved in many other parts of the world). When history is written fifty, a hundred, or even two hundred years from now, what will it have to say about your record?

The letter is signed "Brenda Luyt."

Another letter reads as follows:

Dear Senator,

The Senate is our chamber of "sober second thought" — the part of our parliamentary system that provides a check on rash action that may be taken by the House of Commons. If ever there was a need for sober second thought it is now, while you have Bill C-36, the Anti Terrorism Bill, before you. I urge you to vote against this bill. It has the potential to forever change the character of Canadian society. The increase in police powers, the infringement on privacy, and the provisions for secrecy of police and court proceedings should be completely out of the question, yet they are being rushed through Parliament. It is up to you to stop this bill.

I have read many accounts of unjust political imprisonment from different countries, including Europe not too many years ago. Every month Amnesty International brings new cases of political prisoners to light. With Bill C-36's provisions and the kind of racial profiling we have seen since September 11, and the kind of police brutality against protesters we have seen since the APEC meetings, we could well find Canada on the list of countries Amnesty International supporters need to write letters to. Do you want to be part of such a horrible and unnecessary turn of history? Please vote against Bill C-36.

She further writes:

Now is time for courage. What will you be proud of in the future — that you towed the party line or that you were able instead to stand up for the civil rights of Canadians?

Remember the Bruce Cockburn song lyrics that said "the trouble with normal is that it always gets worse"? What we would have considered an outrageous violation of our rights 2 years ago has just been passed by our MPs. What will "normal" be after two or three years of having Bill C-36 in

force? And in 5 years, when the "sunset clause" is due to come into effect, will the Government of the day permit it, or will it have become so accustomed and dependent on the increased police powers that it will amend the Bill to eliminate whatever sunset provisions entirely? You have history in your hands right now. Please vote against Bill C-36.

That is from Cathy Holtslander of Saskatoon, Saskatchewan.

Senator Taylor: Is that your neighbour?

Senator Tkachuk: Senator Taylor, if she was one of my neighbours, I would be proud of it.

• (2240)

Bill C-36 is the perfect legislative example of a government that has no direction or philosophy to deal with national and urgent issues. September 11 was not the first crisis this government has faced since 1993. In fact, there have been a few, including the Quebec referendum, the management of the Brian Mulroney file, the case of the Chinese boat people and the mishandling of tens of thousands of refugees prior to September 11. All these cases can best be described as having been handled inadequately by the government.

In the case of the Quebec referendum and the terrorist attacks on September 11, both of which were threats to our national security in very different ways, there was an abdication of the government's role as keepers of our security and fiduciaries of our sovereignty. In both cases, the acts of our Prime Minister have been downright embarrassing.

As Conservatives, we have also failed the country. Instead of toiling on behalf of our country and instilling some fear in the hearts of Liberals as a national opposition, we have bickered amongst ourselves. As a result, we may have earned ridicule from the government in private moments.

By not fearing the opposition after three consecutive victories, the government acts even more haphazardly, arrogantly and, might I dare say, sloppily. The word "sloppily" sounds like what it is. "Sloppily" is a word that draws a perfect picture of behaviour. These words are epithets for the government of Jean Chrétien. Worse, across the halls of Parliament stands no party whom they fear. That is how the Liberals are getting away with this bill.

It strikes me that as a failed opposition this is what we are supposed to buttress in the Senate. This is the place that most recently reared its head to fight the GST and free trade. It again raised its proud head to fight legislation that would have denied citizens access to the courts. We are being called on to act again.

Those on the government side who sat on the Special Senate Committee on Bill C-36 know why they are there.

Instead of a coherent plan to fight terrorism, we have instead two bills, Bill C-36 and its post-graduate bill, Bill C-42. Instead of a plan to make Canadians safe and secure, we have two bills that will have the opposite effect when finally passed.

We have a government that refuses to say that we are at war, that we face an emergency or that Canadian lives are in jeopardy. Instead, the government is attempting to pass into law draconian legislation —

The Hon. the Speaker: I regret to advise the Honourable Senator Tkachuk that his 15 minutes have expired.

Senator Tkachuk: Honourable senators, I ask for leave to continue.

The Hon. the Speaker: Honourable senators, is leave granted?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Leave is not granted.

Hon. Lowell Murray: I move the adjournment of the debate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea".

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Is there an agreement as to the ringing of the bells?

Senator Rompkey: I propose a half-hour bell.

Senator Stratton: One hour.

The Hon. the Speaker: Call in the senators.

• (2340)

Motion negatived on the following division:

[Senator Tkachuk]

YEAS THE HONOURABLE SENATORS

Andreychuk
Atkins
Buchanan
Comeau
Di Nino
Gustafson
Johnson
Kelleher
Keon

Kinsella
Lynch-Staunton
Murray
Nolin
Prud'homme
Rivest
Spivak
Stratton
Tkachuk—18

NAYS THE HONOURABLE SENATORS

Bacon
Callbeck
Carstairs
Chalifoux
Christensen
Cook
Corbin
Cordy
Day
De Bané
Fairbairn
Ferretti Barth
Finestone
Finnerty
Fitzpatrick
Fraser
Furey
Gill
Graham
Hubley

Jaffer
Joyal
Kirby
LaPierre
Léger
Maheu
Mahovlich
Milne
Moore
Morin
Phalen
Poulin
Poy
Robichaud
Rompkey
Sibbeston
Taylor
Tunney
Watt
Wiebe—40

ABSTENTIONS THE HONOURABLE SENATORS

Nil

Senator Murray: Honourable senators, I trust you will indulge me, at least to the extent of letting me discern some faint echoes of the GST debate in what we have been doing this afternoon and this evening, and to say that I would be less than honest if I denied that altogether it has been quite a satisfactory and even enjoyable experience.

Some Hon. Senators: Hear, hear!

Senator Murray: I can tell honourable senators honestly that I had not intended to intervene in the debate on this amendment though I support it and would be voting for it in any case. However, I have been moved to intervene by the intervention how many hours ago was it now, of our colleague Senator Fraser. She, among other things, suggested to us that a sunset clause was somehow alien to our Canadian traditions. I thought about that and it suddenly occurred to me that in our very own Charter of Rights and Freedoms we have provision for a sunset clause.

Senator Milne: Creeping Americanization.

Senator Murray: Senator Milne says it is creeping Americanization, and I will come to that point in a moment. I am glad to have the opportunity that the honourable senator has provided.

It is, in the famous or notorious notwithstanding clause, section 33 of the Charter of Rights and Freedoms. As honourable senators will be aware, that notwithstanding clause provides that "...in an Act of Parliament or the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter."

Those sections I recall, as all honourable senators will, are pretty much the fundamental freedoms that Parliament and governments are permitted to run over with the notwithstanding clause.

However, subsection 33(3) provides that such a declaration "shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration."

Some Hon. Senators: Oh, oh!

Senator Murray: As I understand the operation of the notwithstanding clause, it is a real sunset clause that is provided for there. A legislature that has enacted a piece of legislation contrary to the Charter and using the notwithstanding clause would have to come back to the legislature and reintroduce the act or the provision that they had passed under the notwithstanding clause. It is a real sunset clause that is provided for, not ersatz sunset clause as we have in this bill.

• (2350)

I say all this with not much satisfaction because, as some honourable senators will recall, a bit more than 20 years ago last month, I think it was, I stood where Senator Stratton is now and did not vote for the Constitution Act of 1982. Rather, I opposed it for other reasons that are not relevant to tonight's debate.

Senator Milne alluded to the fact that some people have said, and I think there is something to it, that the passage of the Charter of Rights and Freedoms was the single most Americanizing thing that was ever done in Canada. I understand that argument and I simply repeat it because that is what Senator Milne wanted. It might be an answer to my response to Senator Fraser's contention that sunset clauses are alien to our traditions here.

I was a member of the special Senate committee that dealt with pre-study of this bill. I do want to confirm, in defence of Senator Fraser, her statement tonight that she was not a great enthusiast. She was not an enthusiast at all of the proposed sunset clause. I do not know that she voted against it, but I know from what she said, and if I may be so bold as to say her body language, that she was opposed to the sunset clause that found its way into our report. That being said, I think it is also germane to

mention that Senator Bacon, on the other hand, wanted a three-year sunset clause.

Some Hon. Senators: Hear, hear!

Senator Murray: I thought it was incumbent upon the committee to try to find a compromise between the extreme positions of these two Liberal senators. Thus, we settled, the majority of us, for a five-year sunset clause. Even though it does not commend itself to Senator Fraser, obviously, I hope that Senator Bacon will be able to put her reservations aside and her wishes for a more rigorous and more restrictive sunset clause and agree that this is better than no sunset clause at all.

The question of the American legal system and sunset clauses actually came up at our committee meeting on December 5, when we had the bill before us. We heard from a Professor Mendes, who tried to argue, and I will quote him:

Sunset clauses by themselves are not a bad thing, but if there can be a one for the whole bill that is fine. However, there may well be an existing sunset clause more potent than having one for the whole bill, and that is the Supreme Court of Canada. For that court to do its job, the proper evidence needs to be coming out on an annual basis.

However, Professor Don Fleming, from the University of New Brunswick said:

Professor Mendes is right about the position of the sunset clause in the American legal system, but we have to look at it differently in our legal system. We have to look at a sunset clause in a different manner from a Supreme Court of Canada "sunset clause" because the bill is so very complex. Issues going to the Supreme Court of Canada will be issue specific. There will be parts of the bill that will be attacked and parts that will not be attacked.

Then Professor Fleming says:

We should recognize that what we are doing now we are doing in the heat of the moment and there should be an automatic end to it because even the same majority government may think quite differently if they are forced to replace the legislation in five years.

Honourable senators, while I have your rapt attention, I should also point out what the Barreau du Québec has said on this bill in general. From what they have said, I would argue in favour of a very firm sunset clause. The Barreau du Québec said:

[Translation]

...we think that the new means at the disposal of government officials, in addition to special secrecy measures, will have irreversible consequences for the rule of law in Canada. It is illusory to think that once these provisions are adopted, there will be any searching reflection on the topic at a later date.

A bit further on, it says:

The three-year time frame for reviewing the legislation is both too long to prevent the contamination of our practices...

"The contamination of our practices," say the lawyers of the Barreau du Québec. It is too short to call into question the provisions dealing with a situation that may well not be eradicated in the next three years.

[English]

Honourable senators, we have, I say with great respect, not heard very convincing arguments tonight in opposition to the sunset clause proposed in the amendment of Senator Lynch-Staunton, not very convincing arguments at all. I would be able, if there were world enough and time, to quote at considerable length other citations from the evidence that we heard, both in the pre-study phase of our work as a committee, and when we had the bill before us. I would be able to quote at length citations from expert witnesses who not only favour a sunset clause, but who are prepared to support this bill only with a sunset clause, and, I may say, with adequate oversight provisions, but that is a matter that we will come to later on in the debate.

As a matter of fact, I intend, if the opportunity arises, to propose an amendment relating to oversight provisions for this bill if it becomes law. I will not, therefore, tonight try to deal with the arguments that Senator Fraser bootlegged into her own

speech on the sunset clause, as opposed to expressing her opposition also to any coherent or comprehensive oversight provisions in the bill. It is much to be regretted.

My own attitude to this bill, from the beginning, has been that I am prepared to give the government, under these circumstances, the benefit of the doubt that the authorities need the powers that are in the bill. I have some understanding of the constraints that the police and security authorities in this country work under, not only because of the Charter and because of the laws as they now exist, but also because of interpretations of the criminal law by the Supreme Court over the years. The authorities feel they need, and the government supports them in this, extraordinary powers to deal with this extraordinary situation. I would be prepared to give them the benefit of the doubt. The least that Parliament can exact in return for giving them these powers is a sunset clause and proper oversight.

The Hon. the Speaker: Senator Murray, I regret to advise you, I must rise, pursuant to section 6(1) of our rules, it being twelve o'clock midnight, interrupt the proceedings before the Senate and declare that a motion to adjourn the Senate has been deemed to have been moved and adopted.

I shall now leave the Chair until the time provided for the next meeting of the Senate, which will be nine o'clock tomorrow morning.

The Senate adjourned until tomorrow at 9 a.m.

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OFFICIAL REPORT
(HANSARD)

Friday, December 14, 2001

THE HONOURABLE ROSE-MARIE LOSIER-COOL
SPEAKER *PRO TEMPORE*



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(Daily index of proceedings appears at back of this issue.)

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THE SENATE

Friday, December 14, 2001

The Senate met at 9:00 a.m., the Speaker *pro tempore* in the Chair.

Prayers.

THE HONOURABLE SHEILA FINESTONE, P.C.

FAREWELL ADDRESS

The Hon. the Speaker *pro tempore*: Honourable senators, Senator Finestone will be taking her retirement on January 28, 2002. She has asked to say a few words to her colleagues before that time.

In keeping with our traditions, we will pay tribute to Senator Finestone following her retirement date when we resume our sittings in February. I will now recognize the Honourable Senator Finestone.

Hon. Sheila Finestone: Everyone looks so wide awake after a long and interesting evening last night. I presume we will return to the same agenda.

Honourable senators, several days ago I delivered here in the Senate personal remarks about my experiences, perspectives and the various dimensions of my life. I referred to my ancestral land, Israel, and expressed the wish — the hope — that a resolution of the Middle East conflict be achieved through continuing dialogue, encouragement and understanding. I spoke from the heart as a mother, a politician, a Canadian, a Québécoise and a Jewish woman.

Today marks a major milestone in my life and career. I am here to deliver my farewell address. Again, I will speak from the heart — and if I start crying, I will be mad at myself — for I have tried to serve my country with profound love and complete devotion.

I was born into a sharing, loving and caring family in Montreal. My family wealth was a significant wealth of traditions, customs and values associated with our culture. For years, with my family, I was a very active volunteer in the community, gaining enormous and invaluable experience in social, housing, cultural and women's organizations. I am grateful for the years when my parents helped instill in me the principles of community, sharing, tolerance and compassion.

My mother and my father would be very proud to see me today sitting in the great Senate of Canada. Indeed, they were the very first ones to give me the inspiration, encouragement and support I needed to undertake a challenging political life, and for that I thank them with all my heart.

Needless to say, my husband, Alan, was the key player — always supportive, fulfilling the key partnership role so

necessary in a politician's life. So, too, were my four sons, David, Peter, Maxwell and Stephen, and their spouses, who acted as organizers of those very tough and exhausting election campaigns. I thank them from the depth of my heart for standing by me through the years of political life.

Pensively, when I was approached to run for the Mount Royal seat that had been held for 16 years by Mr. Trudeau, I felt deeply honoured and scared to death, yet very humbled at that awesome prospect. Let me share a brief perspective with honourable senators.

One day, Mr. Trudeau, looking at me through those sharp blue piercing eyes, asked why I agreed to run for office; did I know what a terrible life it could be? I told him it was all his doing, his fault, because he had brought in multicultural rights and women's rights, under the umbrella of human rights, through the Canadian Charter of Rights and Freedoms. It struck a profound chord within me. I sincerely believed that with this exciting new Charter, a Charter for democracy, real democracy, that Canada would be strengthened and thus become a better, more equitable and fairer country.

Several years later, in 1999, when I was appointed to the Senate, Mr. Trudeau was there to warmly congratulate me for this great honour, to which I owe Mr. Jean Chrétien, our Prime Minister. Indeed, Pierre Trudeau was the one who gave me the vision and strength to serve in the name of justice for all, and for that I thank him.

As my political career progressed, I was fortunate enough to meet many remarkable people whose exemplary lives and achievements were germinal to the development of my national and international political thought and orientation.

● (0910)

There are many that come to mind indeed. My first thought actually goes to my late friend and fellow parliamentarian Shaughnessy Cohen. I miss her humour and political skill to this day.

I remember my role model, Senator Thérèse Casgrain; Monique Bégin, one of the most creative ministers in Canadian politics; Mary Two-Axe Early, an Aboriginal woman and a mover and shaker — a moving force in my life, too — for the rights of Indian women; and Claude Ryan, a tough but fascinating leader of the pro-federal Liberal Quebec opposition party and long-time editor of *Le Devoir*. I also remember John Humphrey, a near neighbour and author, along with Eleanor Roosevelt, of the Universal Declaration of Human Rights. It was from Mr. Humphrey that I learned to actively defend women's rights as human rights.

As honourable senators may know, education and scholarship have always been and continue to be the key areas of focus for me. To this end, last year I accepted the invitation of McGill University as "Woman of the Year" to establish a Scholarship Award in Women's Studies for undergraduate students who contribute to the community and work for the recognition of women's rights and human rights.

I must also mention the woman's movement in Quebec, la Fédération des Femmes du Québec, and the National Action Committee representing women's rights across Canada. From them, I learned how to move into the political sphere of action, and for that I thank them all.

Just as an aside, I have always believed in equality. I think that the word "feminist" is a very good word.

Honourable senators, my referendum experience will remain one of the most memorable accomplishments of my political life. As a member of the executive committee for the "No" side and as a representative of Quebec women, I was able to organize and help coordinate efforts with the women from the Liberal Party of Quebec. Some of us in this room will remember Les Yvettes, a mass rally composed of over 15,000 women, who affected a sea of change that assured the winning of the 1980 national referendum for Canada. For that, I thank them.

With help and inspiration from diverse influential and supportive people, my parliamentary colleagues, my staff, researchers, administrators and support personnel, I participated and I hope contributed and achieved what I consider to be some great victories. They have my gratitude for the long hours of dedication and commitment they demonstrated. I want to thank them all for a job well done.

The milestones of my political life are many. As I am now on the threshold of leaving the Senate, there are a few highlights that will remain in my mind and heart.

As a new MP, I was sent to Nairobi for the Second World Conference on Women. I met there with world spokespersons on the evolution of women, including Betty Friedan, Bella Abzug and Gloria Steinem. These were articulate, convincing and outspoken people. For their valuable input and cooperation, I thank them all.

The pleasure of working on Bill C-31, the Indian Act, which returned justice and status to Indian women, was a highlight that I remember with satisfaction. My many trips to our great North indicate the many ongoing Aboriginal problems that I saw in those communities.

As Secretary of State for Multiculturalism and the Status of Women, I was leader of the Canadian Delegation to the Third Conference on Women in Beijing. It was an extraordinary experience to work on the planning committee at the UN with concerned women like Ambassador Madeline Albright. That was an experience. Our Canadian delegation, with our NGOs, were able for the first time in history to inscribe and table into

the action plan a document that recognized women's right to choice, defined rape as a war crime, recognized women's sexual orientation as well as express concern for the "child-soldiers," among many other issues about equality for women. Canada played an outstanding role as negotiator in every aspect of the final document. I want to thank all those exceptional women and those people who helped and supported me during the Beijing Third World Conference.

Throughout my wonderful journey, the focus was from the local to the national to the international, for my constituency was a global village. International relations mirrored the concerns happening at my doorstep. I joined the Canadian branch of the Inter-Parliamentary Union, the highly respected organization of world parliamentarians.

Later, as Canadian Chair of the Inter-Parliamentary Union, together with hard-working parliamentarians from both Houses, we were active participants sharing our Canadian experience and perspective. The role we played promoted the values of diversity and tolerance, with the full recognition of human rights within a democratic society. We underscored the mission and role of parliamentarians as legislators, an important expression of control of the executive in a democratic society. Our 144 countries represented the place of "We the People" on the world stage, promoting in cooperation with the United Nations the areas of peace and security, international law, human rights and gender issues. In that group, world policy and resolutions on major areas of world concern are discussed. Parliamentarians become more familiar with the issues, thereby becoming more effective in their own Parliaments.

I add as a warm and lasting memory the honour bestowed on Canada through my election to the IPU's world executive and as a member of the Steering Committee of the Western 12+ Nations.

Talking about highlights, it was a significant honour to have been appointed special adviser on land mines by former Minister of Foreign Affairs Lloyd Axworthy and now Minister John Manley. Canada's outstanding contribution to the world, of which we can all be so proud, the Ottawa Convention on Anti-Personnel Land Mines, signed in 1997, opened new horizons to international cooperation for the elimination of this dreadful form of hidden weaponry.

Just last week, I was honoured to be invited to join U.S. Secretary of State Colin Powell and Queen Noor in Washington to celebrate the fourth anniversary of the Ottawa convention at the U.S. Department of State. As we were sitting at the dinner table, surrounded by an atmosphere of both sombreness and celebration, Mr. Powell had very kind words for Canada's enormous efforts to the cause. I felt so proud of our achievements and so deeply moved thinking about the thousands of lives that we had saved. In Cambodia and Mozambique, as I donned the clothes of the de-miners and did a few metres of clearance, I appreciated the difficult, challenging and dangerous tasks that are ahead in order to clear the fields and allow children to once again run free without fear.

I must say a final word about two personal legislative projects. The first relates to an amendment to the Broadcasting Act that allows for the participation of citizens in decisions regarding television and broadcasting to their homes, thus harmonizing the existing legislation with that of the Telecommunications Act.

The bill, which passed this Senate, is now sitting in the other place. I hope it will be realized in the next session that this amendment would afford citizens the opportunity to translate the normative principles of openness, impartiality and transparency into functional ones. Through this change, citizens can have a voice in the decision-making process in these matters.

Honourable senators, the second highlight refers to my long-standing campaign to protect the constitutional values of our country. I am sure it will soon find fertile ground and reach fruition with all of your help. I am speaking about my privacy bill, an overarching template to safeguard and protect the human right to privacy of Canadians. I believe that privacy is a fundamental human right and once lost is unlikely to be regained. I thank this Senate, by the way, for having founded the Human Rights Committee under the able chairmanship of our colleague Senator Andreychuk, who is causing so many problems today.

Without adequate protection of privacy, many other rights integral to a democratic society are also lost. Over the years, it has been my hope and desire to promote legislation that would go beyond the limitations contained in the Personal Information Protection and Electronics Document Act. This charter, I think, is the answer. I do not wish to see one of the fundamental pillars of democratic society, that of the right to privacy, crumble under the weight of imminent necessities.

Honourable senators, I have reflected over the past few weeks about how my contribution has been perceived. I am a determined woman, and as my good friend Anders Johnsson, the IPU Secretary-General recently stated, "...with an uncanny knack of always calling a spade a spade." I am also a woman and a politician who, I hope, moved with conviction in what she believed.

• m920 •

Honourable senators, I am sure you know about the fly that sat upon the axle of a chariot wheel and said: What a lot of dust I raise. I can hear some of you coughing already. Let me say, however, that my most pressing thought during my political life has always been to think of Canada as a country melded together with love, humanity, equity and justice.

In this chamber of sober second thought, I have been helped to see with clarity a country created to unite mankind and womankind by those passions that lived and not by passions that separate. I fought my own battles based on my convictions and never exempted myself from the spirit of hope, liberty and justice. It is with a great sense of pride that I stand here today with gratitude to those who have made this an unforgettable experience — so let the dust rise.

My story, however, would not be complete were I not to remember the words of my grandmother Cummings and the

wisdom they contained. Grandmother often repeated to me: "Remember, to succeed in life you got to have mazel." Mazel is a Yiddish word to express good luck and good fortune. It expresses the wish for challenge and opportunity to come your way. However, in order to succeed, she said, one must be ready with eyes open and a great sense of adventure, curiosity, preparation and the willingness to take risks.

Honourable senators, my road was paved with mazel. With much enthusiasm, vision and mazel, I have lived a full life and have had a truly satisfying career. I thank all honourable senators for helping my personal and professional growth, for your friendship, wisdom and acceptance. The 18 years spent in political life, between the other place and in these chambers, represents for me a unique experience that so few have had the good fortune to encounter.

Honourable senators, I bid you farewell, yet I believe that life is a cycle. In reflection, and with an enlightened perspective, I look upon this not as an ending but as a new beginning. For that, I thank you.

However, I want to remind honourable senators of an old Chinese proverb that comes to mind. It says: May you be born in interesting times. Boy, was I ever born in interesting times. Thank you very much.

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

COAST GUARD

NAV CANADA—DISCONTINUANCE OF AVIATION WEATHER REPORTS

Hon. Pat Carney: Honourable senators, yesterday, I brought to your attention the fact that effective today, with very little notice, the Coast Guard has ordered lightstations on the B.C. coast to cancel aviation weather reports to aviators. The instructions are quite clear. They state:

If you have direct requests for aviation weather information...you must not provide any METAR style aviation weather observations as you are not authorized to do so. Strict compliance with this policy must be adhered to.

Honourable senators, I want you to think about the consequences of this order. Instead of giving aviation weather reports, the lightstations are limited to marine weather reports. Well, marine weather reports are designed for mariners; aviation weather reports are designed for aviators. Being told that it is partly cloudy and raining does not suffice for pilots or passengers on the coast. I want honourable senators to think about the plight of the pilots and their passengers in their float planes, being denied information about the weather ahead — whether fog or lightning or wind — and the state of the sea. They are unable to make informed judgments about whether to proceed or to return in a region where there is no alternate form of transport.

I should like honourable senators to think about the plight of the lightkeepers sitting through the storms in their isolated lightstations, forbidden to give information that might save lives — hearing the sounds of the float planes overhead and not being able to give information that could assist them.

Yesterday, I started to read down the list of the lightstations affected by this order and wish to finish reading the names of lightstations that are no longer allowed to give aviation weather to aviators and passengers. The lightstations are: Quatsino, a very isolated station; Ivory Island; Langara, at the northern end of the Queen Charlotte Islands; Boat Bluff, on the mid-coast; Bonilla Island; Triple Island, a windswept, isolated place; Pine Island; Green Island; McInnes Island; and Merry Island. That completes the list of the staffed lightstations on the B.C. Coast that have been told that, effective today, they are no longer allowed to provide their aviator weather service.

Transport Canada, Environment Canada, the Coast Guard and Fisheries and Oceans Canada will have to bear the responsibility for the deaths, disasters and injuries that will occur on this coast because lightstations are not permitted, as of today, to give aviation weather to the float planes.

Honourable senators, I wish all of you Merry Christmas, with the thought it will not be a Merry Christmas for anyone forced to fly the B.C. Coast.

THE SENATE

TELEVISIONING OF PROCEEDINGS

Hon. John G. Bryden: Honourable senators, I rise today to urge senators to adopt the televising of the proceedings in this chamber. When I saw the chilling newspaper headlines today, I could not help but think how reassuring it would have been for Canadians to watch last night's proceedings, and to know that the Senate was about the nation's business and looking after the security, safety and freedom of Canadians.

Honourable senators, I had called my grandchildren to explain to them why I would not be able to come to their closing ceremonies. As children are wont to be, they were more concerned about my disappointment than about their own disappointment. They reassured me that their parents would videotape their events so that I would be able to watch their performances when I came home. I could not help but think that it would be wonderful if, after they finished showing me the videotape of their activities last night, I could show them the videotape of my activities last night.

As honourable senators know, children love to ask questions: Why is that and why is that? Why are they yelling back and forth. Grandpa? Why are they popping up and down? I would have to try to explain. I would tell them to watch, that a senator would come into the chamber, ask permission to do something, and a senator on the other side would say, "No." Then a voice would say, "I want to be absolutely clear. Will those in favour of the motion please say 'yea'?" Then voices would be heard: "Yea." Then a voice would say, "Will those opposed to the motion please say 'nay'?" On the other side, voices would be heard: "Nay." I would tell my grandchildren that that is why they

would hear senators yelling back and forth. Then I would explain about the results of the vote and whether the yeas or the nays have it and about who loses, that two people would then stand up and one voice say, "Call in the senators." The same voice would ask how long the bells should ring. One whip would propose one-half hour and the other whip would say that the rules state one hour. The bells then ring and everyone leaves the chamber for an hour. They chatter back and forth in the halls, et cetera. The children wait. I would fast-forward the tape at this point, so the children do not have to wait too long, because it is a little boring at this stage. After an hour, the senators return to the chamber. His Honour calls, "All those in favour." Those in favour stand, and when their names are called they sit down. The same process takes place for the other side. They stand up and then they sit down. The children would say: "Why are they doing this? They are waiting for the bells. Why is each side chatting happily back and forth?" How do I explain it? I would say: "Because it is a game. The game is called politics, and that is how it is played in the Senate of Canada, Canada's chamber of sober second thought."

• (1930)

ROUTINE PROCEEDINGS

STATISTICS ACT NATIONAL ARCHIVES OF CANADA ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Marjory LeBreton, Deputy Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Friday, December 14, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

TWELFTH REPORT

Your Committee, to which was referred Bill S-12, An Act to amend the Statistics Act and the National Archives of Canada Act (census records), in obedience to the Order of Reference of Tuesday, March 27, 2001, has examined the said Bill and now reports the same without amendment.

Attached as an appendix to this Report are the observations of your Committee on Bill S-12.

Respectfully submitted,

MARJORY LEBRETON
Deputy Chair

(For text of appendix, see today's Journals of the Senate, Appendix to the report, p. 1145.)

The Hon. the Speaker pro tempore: Honourable senators, when shall this bill be read the third time?

On motion of Senator Milne, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

PRIVACY RIGHTS CHARTER BILL

REPORT OF COMMITTEE ON SUBJECT MATTER TABLED

Hon. Marjory LeBreton: Honourable senators, I have the honour to table the thirteenth report of the Standing Senate Committee on Social Affairs, Science and Technology, which deals with the subject matter of Bill S-11, to guarantee the human right to privacy. This was Senator Finestone's initiative.

Honourable senators, pursuant to rule 98(3), I move that the report be placed on the Orders of the Day for future consideration at the next sitting of the Senate.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

STUDY ON DEVELOPMENTS IN THE FIELD OF PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE TABLED

Hon. Marjory LeBreton: Honourable senators, I have the honour to table the fourteenth report of the Standing Senate Committee on Social Affairs, Science and Technology, which deals with the developments since Royal Assent was given during the second session of the Thirty-sixth Parliament to Bill C-6, to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions, and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act.

QUESTION PERIOD

SOLICITOR GENERAL

RCMP SEARCH OF RESIDENCE OF FORMER PRESIDENT OF BUSINESS DEVELOPMENT BANK

Hon. Marjory LeBreton: Honourable senators, my question is directed to the Leader of the Government in the Senate regarding l'affaire Grand-Mère, which on its own raises new alarming and unanswered questions, all obscured by the considerable efforts of those surrounding the Prime Minister to put up smoke screens, muddy the water and generally stonewall efforts to get to the truth.

In today's newspaper, there is another report of a raid on the home of the former president of the Business Development Bank

of Canada. What is particularly alarming about the report is the confirmation of the closeness of the RCMP and the Prime Minister's Office. There is no line, not even a blurred one. Joan Bryden, a reporter for Southam News, is so much on the inside and such an apologist and spokesperson for the Liberal government that we often joke that she should be on the payroll — in fact, she is, perhaps, just ahead of Jason Moscovitz, who has left the media and has gone to the Business Development Bank of Canada. How is it that Joan Bryden knew of the RCMP raid before the lawyer for Mr. Beaudoin? In fact, that is how he learned of the raid.

My question is simple. How can the government claim RCMP independence when a friendly reporter with tremendous Liberal sympathies is tipped off about a raid involving the very controversial case involving the Prime Minister?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I have heard some interesting questions in this chamber, but I have never, in my experience here in seven years, heard such a blatant attack on an independent police force, the Royal Canadian Mounted Police. At least this side has great pride and respect for the contributions of the RCMP, in their honour and in their service to this nation.

Senator LeBreton: Honourable senators, that is very interesting. However, the minister did not answer the question. The question was: How does a reporter know about this before the lawyer for the former president of the Business Development Bank?

The minister talked about the RCMP. Yet, a couple of months ago, there was a front-page picture in the *Hill Times* that showed the Commissioner of the RCMP walking to a press conference, not accompanied by his own communications people, but accompanied by Francine Ducros and another member of the Prime Minister's communications staff. Are we not correct to wonder if the Commissioner of the RCMP is very close to the Prime Minister's Office?

Senator Carstairs: There are two parts to the question. I have no idea how Joan Bryden learned of the warrant, but I would assume that she learned of it in the way that all reporters learn of warrants that are being exercised, namely, in the due process of her duties as a member of the third estate.

In terms of the connection between the Commissioner of the RCMP and the Prime Minister's Office, quite frankly I think that is an affront to his character and not worthy of this chamber.

Some Hon. Senators: Hear, hear!

Senator LeBreton: The point is that Joan Bryden knew about this and talked about it before the lawyer for Mr. Beaudoin knew. It is interesting that rather than investigating the very serious questions surrounding the Prime Minister, the RCMP is going after a public servant — a person who had been in the banking business long before all of this controversy ever developed. If the RCMP is supposed to be such an independent, arm's length body, how do reporters find out information before the lawyers for the former president of the Business Development Bank?

Senator Carstairs: With the greatest respect, warrants are given by the courts and not by the Prime Minister's Office.

Senator LeBreton: There you are in your school-teacher mode. Of course, I know that warrants are given by the courts!

We currently have before us in Parliament Bill C-36. When we see these kinds of things happening — this is the second time that this gentleman's home has been raided — we wonder about giving police more powers. That is indeed a scary prospect.

Senator Carstairs: Honourable senators, I may be in my school teacher mode, but I would hope that my students would ask questions of greater integrity.

Senator LeBreton: Honourable senators, I cannot let that comment go by. Conservatives taking lessons from Liberals on integrity is the greatest oxymoron I have ever heard of.

Senator Carstairs: Each and every one of us in this chamber should be responsible for the institutions in which we take great pride. I regret that in the honourable senator's questions this morning she has clearly not shown any appreciation of that wonderful police force, the RCMP.

HERITAGE

CANADIAN BROADCASTING CORPORATION—TECHNICIANS' STRIKE

Hon. Lowell Murray: Honourable senators, I am sure there will be occasion, perhaps sooner than we realize, to return to the matters that have been raised by Senator LeBreton and responded to so vigorously by the Leader of the Government in the Senate.

I want ask the Leader of the Government a question about the CBC technicians' strike. Parliamentarians wending their way home for the Christmas holidays will surely not be very proud of the fact that employees of one of our largest and most important Crown corporations are on the picket lines. However the dispute started, it seems to have ended, at least for the moment, in a lockout by the CBC management of its employees. What is the federal Department of Labour, which clearly has jurisdiction in this field, doing about this situation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, to my knowledge, the department at this point is doing nothing because no request has been made by either management or, more particularly, by the union for the Department of Labour to become involved.

Senator Murray: Honourable senators, I am not sure that a direct request is necessary or is always the case. The Minister of Labour or senior officials in that department could make it clear that their good offices are available to try to resolve the issues in the dispute.

Is there any concern at all on the part of the government and of the minister who reports to Parliament for the CBC, namely Ms. Copps, the Minister of Canadian Heritage? I appreciate that ministers are not supposed to involve themselves directly in the management of the Crown corporation. Nevertheless, we have

here a labour dispute which, frankly, is an embarrassment to that corporation. We all know that the minister and the government never hesitate to share in the glory when there is CBC glory to be shared. Is the Minister of Canadian Heritage concerned about this matter? Has she offered her good offices to try to resolve it?

Senator Carstairs: The honourable senator is quite right when he states — and I will just summarize — that the minister responsible for heritage is not supposed to involve herself in the internal management of CBC. That is exactly how the minister is performing. The CBC technicians know quite well of the good offices available both with the Department of Labour and with the Department of Canadian Heritage, should they seek help.

FOREIGN AFFAIRS

INCREASE IN PASSPORT FEES

Hon. Terry Stratton: Honourable senators, my question concerns Monday's announcement of a sharp increase in passport fees. It was not part of the budget, but the announcement was timed so that it would be lost in the media traffic created by the budget.

This is very interesting. The cost of an adult passport will jump to \$85 from \$60. The government will now require babies as young as one month old to have their own passport. There will be a charge of \$20 for a passport for a baby and \$35 for other children up to age 16.

The main justification for this fee is to meet the \$7-million annual cost for new passport security measures. However, these new passport fees will raise an extra \$50 million per year. We are cutting taxes, are we? Are we really cutting taxes? This is called increasing taxes by stealth.

What possible justification is there for raising an extra \$50 million per year in passport fees to cover an extra \$7 million in spending?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the increase is not just to cover the additional \$7 million in security measures. It is also to make the passports self-supporting, if you will. Passport holders should pay their own way. They have not been doing so. In recent years, passports have been a cost to general revenues. It has been determined that passport applications and fees should therefore be processed in a way that reflects the cost of putting together those passports.

As for the honourable senator's question with respect to children and infants, this regulation has been put in place for the very practical reason that we know that family members frequently travel separately. Mothers and fathers cannot both travel with the child. Unfortunately, in a small number of incidents passports are used to take a child outside the country without the permission of the other parent because the child is registered only on the mother's passport or only on the father's passport. It has been determined that this would be a safeguard measure to help prevent that from happening.

Senator Stratton: Honourable senators, are we to assume that the baby's passport photograph will have a requirement to be changed every six months?

The minister has led me to my next question. If the increase in fees, amounting to some \$50 million, is to cover the cost of passports, can she tell us what the issuance of passports costs per year? If the \$50 million is additional to the fees now being brought in at a cost of \$60 per passport, then what is the total cost for issuing passports and what is the total revenue? The minister may not have that information, but I would appreciate receiving it later.

One question that bothers me and many other people is that a family of four with an infant and a pre-teen child must now pay another \$105 to acquire passports for a trip abroad. New airport taxes will add about \$200 to the family vacation. That is more than \$300 in added taxes just to go on vacation. How will the government encourage people to get back on airplanes when it has just nailed them with this kind of increase in costs?

Senator Carstairs: With the greatest of respect, a passport is not good for just one trip. A passport covers that individual for five years. That \$105 to which the honourable senator refers would make the family eligible to travel for an entire five years.

As to his comment about the infant, no, the infant would not require a new picture until a new passport is issued. It is very clear that a 10-year-old child could not travel abroad on a passport with a baby's picture on it.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I cannot believe the government is going to allow a one-month-old child to have a passport with a photo that is valid for five years. Surely it must be changed more often.

• (0950)

Senator Carstairs: As with adults, honourable senators, a passport is valid for five years. I do not know if you have looked at your recent passport picture, but I have looked at mine. My hair has changed in colour considerably since the last time it was issued. I actually had glasses on then, and I do not wear glasses any more. Changes take place not just with infants but with adults as well.

Senator Lynch-Staunton: Does the minister mean to say that a five-year-old child will be able to show his passport with a picture of him when he was one month old and have it accepted? Is that what the minister is saying?

Senator Carstairs: Yes, honourable senators, because at the present time he would be travelling, in all likelihood, on a parent's passport, and there would be no picture at all.

AGRICULTURE AND AGRI-FOOD

CAUCUS TASK FORCE ON FUTURE OPPORTUNITIES IN FARMING—PRIME MINISTER'S RESPONSE TO ISSUES IN INDUSTRY

Hon. Leonard J. Gustafson: Honourable senators, my question is directed to the Leader of the Government in the Senate. In the spirit of the season, I feel it necessary to ask this question on behalf of farmers, some of whom, because of a very difficult year with drought and so on, will have a difficult time during this season and in the spring to come.

I was pleased to see that the Minister of Finance pointed out in his budget the importance of doing something in the grain and oilseeds area. I also noticed that the Minister of Agriculture indicated that he was taking some direct steps to deal with this very difficult situation that exists because of the drought, especially in the grain and oilseeds sector.

Can the minister tell us if the Prime Minister is, in his Caucus Task Force on Future Opportunities in Farming, 100 per cent behind the Minister of Finance and the Minister of Agriculture?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Prime Minister is 100 per cent behind each and every one of his ministers until such time as he is not 100 per cent behind them, at which point they are no longer in his cabinet.

Senator Gustafson: Honourable senators, I must be fair and honest. I have not heard from the Prime Minister the kind of positive responses that I have heard from the Minister of Agriculture or the Minister of Finance. That is somewhat disturbing. Has the Prime Minister indicated when the task force will report and what direction will be taken to deal with the problems that have been identified by the Minister of Finance and the Minister of Agriculture?

Senator Carstairs: Honourable senators, when the Prime Minister receives the task force report, it will become a public document. When the Minister of Agriculture or the Minister of Finance make comments about the situation with respect to agriculture, they are, in fact, speaking for the Prime Minister.

Senator Gustafson: Honourable senators, the problem here is time. The farmers cannot wait any longer. The farmers cannot wait until Paul Martin becomes Prime Minister of Canada, if that ever happens. It is most important that the government take action now. We cannot wait two or three years. I get a sense that many senators, on both sides of this house, are concerned about what is happening in agriculture, especially in the grain and oilseeds sector, and about the future of agriculture in this country, as well as issues in security. Timing is of the essence. When will the government act? We will be away from this place until February, and the next thing we know the farmers will be in the fields. They cannot be in the fields without having the security that will come with the backing to help them fulfil their very important role in this country.

Senator Carstairs: Honourable senators, as I have indicated in the past, the federal government is working with the provincial governments to develop and implement a new, integrated and financially sustainable agricultural policy. Having said that, federal and provincial programs together will put into agriculture in this country this year \$3.8 billion. That is a substantial amount of money, and it represents an increase of 37 per cent since 1997-98.

Senator Gustafson: That is just half of what the Mulroney administration put in during the years we were in charge.

FOREIGN AFFAIRS

CONFLICT IN ISRAEL

Hon. Marcel Prud'homme: Honourable senators, on November 29, 1947, a great man, under whom I was first elected, Mr. Lester B. Pearson, while at the United Nations helped implement a report written by another great Canadian from the Supreme Court, Mr. Pearson succeeded in getting 33 votes for the resolution, 13 against and 10 abstentions, including Great Britain and China. The resolution was very simple. There shall be in the land of Palestine two states, one for the Jews, one for the Palestinians — of course, no consultation with the Palestinians.

Now that we see the butcher of Lebanon, who is now Prime Minister, imitating two other ex-prime minister butchers, Menachem Begin and Moshe Sharett, will the Canadian government use its extremely popular, good offices to remind people of our great responsibility in creating the mess we are in today? Will the Canadian government use its extremely good offices at the United Nations to stop this massacre that is about to start in the good land of Bethlehem, and everywhere else, on the Eve of Christmas? I am not putting forward new policies; I am simply putting before all honourable senators the exact Canadian policy and the exact voting record. I know that Mr. Manley is under immense pressure to do otherwise, but Canada still is a light of hope for these people who cry and demand that someone, somewhere, get the parties back to the negotiating table.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, not only can the Government of Canada concur in the statements made by the honourable senator, but I believe the people of Canada can concur in them as well. The Government of Canada has been on the record for some time as standing for the establishment of a Palestinian state. The Prime Minister yesterday indicated that Mr. Arafat was still the head of that Palestinian state, and, therefore, that is the only one with whom negotiations can take place. He urged that negotiations be ongoing.

Hon. Douglas Roche: Honourable senators, yesterday I drew to the attention of the Senate Pope John Paul's annual message for peace in which there is a very strong and poignant passage recalling the 50 years of enmity and struggle and heartbreak between the Israelis and the Arabs over Palestine and asking for renewed effort by governments at negotiations to bring to a halt

this terrible, wanton destruction of human life. Has the Canadian government noted what the Pope said, and will it respond in some way?

Senator Carstairs: Honourable senators, the Pope's message is always well received in Canada as the representative of a significant religious group within this nation and throughout the world. Of course his message is taken seriously and is given every consideration.

● (1000)

[Translation]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table a response to a question raised on November 21, 2001, by Senator Roche regarding social development aid.

FOREIGN AFFAIRS

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY— SOCIAL DEVELOPMENT AID

(Response to question raised by Hon. Douglas Roche on November 20, 2001)

We welcome the additional \$1 billion provided in the 2001 budget. CIDA's Social Development Priorities (SDP) which were launched in September of 2000 commit the Agency to an aggressive five-year investment plan in four priority areas of social development: health and nutrition, basic education, HIV/AIDS and child protection. Overall spending in these four priority areas is planned to double over the five-year period 2000 to 2005. As part of this plan SDP spending is planned to increase from a target of \$467 million in this fiscal year to \$ 580 million next fiscal year, a year over year increase of almost 25 per cent.

The Government is also taking steps to ensure that Canadians' aid dollars are spent in the most effective way possible. Under the direction of the Minister of International Cooperation, the Canadian International Development Agency (CIDA) has embarked on a thorough review of its programming with the aim of developing new, more effective ways to support development in developing countries. CIDA has published a comprehensive discussion paper, *Strengthening Aid Effectiveness*, which sets out a range of options for improving the effectiveness of Canadian aid. This document has been the subject of widespread consultation with development partners across Canada and will be published in final form early next year. The directions set out in *Strengthening Aid Effectiveness* will help to ensure that the money Canadians invested in overseas development will be used as effectively as possible.

[English]

POINT OF ORDER

Hon. David Tkachuk: Honourable senators, I rise on a point of order under rule 51, which reads as follows: "All personal, sharp or taxing speeches are forbidden."

I would ask that the Leader of the Government withdraw the lack of integrity statement used in reference to Senator LeBreton during Question Period.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, if Senator LeBreton believes that she acted with integrity, then of course I would respect that interpretation of her opinion and would withdraw.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, could we ask our colleague Senator Robichaud to walk us through the Orders of the Day and give us a general indication as to which orders will be called and in what order, so that senators can estimate when they might be participating on an item of interest to them?

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, that was my intention and I do so with pleasure, for the information of all honourable senators. We intend first to address, under government business, Item No. 4, that is, third reading of Bill C-44, and then follow the order established from this Item on, namely Items Nos. 5, 6, 7, 8, 9 and 10, to then address Item No. 3, third reading of Bill C-6, Item No. 1, the motion for third reading of Bill C-36 and, finally, Item No. 2, third reading of Bill C-7.

AERONAUTICS ACT

BILL TO AMEND—THIRD READING

Hon. Aurélien Gill moved the third reading of Bill C-44, to amend the Aeronautics Act.

He said: Honourable senators, I am pleased to rise today at third reading of Bill C-44.

[English]

The central purpose of this bill is to enable Canadian air carriers to work consultatively with their international partners in conducting an effective fight against terrorism. I make this point so that we will recognize that although the timing of this specific bill is in response to the recent American Aviation and Transportation Security Act, its content has been prepared with respect to an international concern.

[Translation]

In this bill, we are asked to cooperate with the Commissioner of Customs of the United States and to allow carriers to release certain basic information on passengers and crew members on board Canadian flights destined for the United States.

As the Minister of Transport mentioned on a number of occasions, a sovereign country, such as our neighbour to the south, can request information on persons wishing to enter its territory.

[English]

The government, through the Minister of Transport, must act quickly so that our carriers can provide the required information and continue to operate efficiently into the United States. This is important for the convenience of Canadian passengers and for the health of the air transport industry and the Canadian economy.

[Translation]

I want to thank and congratulate my colleagues from the Standing Senate Committee on Transport and Communications, and particularly its Chair. I also want to thank my colleagues for the seriousness with which they examined this important bill.

Bill C-44 will allow carriers to comply with the international requirements on the disclosure of information on passengers and crew members, so as to support aviation security while reconciling Canadians' right to privacy.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

[English]

APPROPRIATION BILL NO. 3, 2001-02

SECOND READING—DEBATE CONTINUED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, at the end of my remarks yesterday, Senator Nolin put a question for which I did not have the material to answer. I now have that material and should like to read it into the record, but I would need leave since I have already spoken to the motion.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Carstairs: Honourable senators, Senator Nolin asked for specification of the items under which the \$225.3 million have been granted to the Canada Customs and Revenue Agency, since they were apparently only informed that the funds were to pursue revenue initiatives and to address additional workload pressures. The actual breakdown is as follows, honourable senators.

Revenue generation of \$95 million, would be spent on 1,599 full-time equivalent jobs to increase federal and provincial tax revenues by up to \$2.9 billion by 2005-06 from additional collections and audit coverage. There would also be \$28.8 million and 434 FTEs to increase the volume in the number of travellers, commercial shipments, tax filers and benefit recipients. This would be a workload increase to deal with this volume of increases. Under asset management, there would be \$44.9 million to provide funds for real property, minor construction and operating costs, new equipment and vehicles, and end-user computing devices. Under investment, \$51.1 million is the Treasury Board contribution to a \$110 million agency investment plan. This investment fund will be used to improve business processes, improve service, and enable electronic service delivery. There will be a \$5.5-million increase to cover the agency's incidental expenses associated with the reference level increase.

Finally, there was an incremental increase for the Department of Justice of \$1.384 million in recognition of the integral legal structure that supports the CCRA, which it requires to implement and enforce changes to the tax laws. Those amounts together come to \$225.3 million.

• 100

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, what is at issue here — and the questions have been asked repeatedly and the answers have not been satisfactory — is the status of \$50 million: \$25 million under the heading of the National Resources Department and the other \$25 million under the heading of the Department of the Environment.

In November, the Speaker of the House of Commons ruled, at page 7455 of *House of Commons Debates*:

...the approval that is being sought in supplementary estimates (A) cannot be deemed to include tacit approval for the earlier \$50 million grant.

This \$50 million was in Supplementary Estimates (A), which was reported to this place earlier this month. The Speaker did add that he would allow continuation of the debate because the government had ample time to take corrective action on the \$50 million. When the supply bill itself came up before the other place, the question was asked, "Where is the \$50 million?" The President of the Treasury Board replied that they were not to be treated with the appropriation bill, but, to quote her, she said, "It will be in Supplementary Estimates (B)."

Yesterday, the Leader of the Government confirmed that the \$50 million was still in Supplementary Estimates (A). She stated:

...the government will not use the current appropriation to reimburse Treasury Board vote 5 for the interim \$50 million...

Therefore, the \$50 million is in the appropriation bill. The government says it will not use it. It will find the amount and repeat it in Supplementary Estimates (B), which we will be getting before the end of the fiscal year.

The challenge here is a simple one. Are we to approve a supply bill that includes amounts the government does not need? It is as simple as that. We have not had a direct answer as to why an appropriation bill will include amounts that the House of Commons Speaker has found irregular in the Estimates, and the President of the Treasury Board has said she will put in Supplementary Estimates (B), that the government, we were told yesterday, will not use.

The best way to resolve this issue — and I made the suggestion to the government — is that we resolve ourselves into Committee of the Whole when we come back next week and invite the President of the Treasury Board to come before us with her officials and explain what thus so far has not been explained to my satisfaction, at least. It is an imposition on the Leader of the Government here to have to answer for every department questions that are largely technical, particularly when it comes to the extraordinary creative accounting that this government has developed both in the budget and in certain Treasury Board advances to various departments.

The only department that can answer directly, with the technical knowledge required, is the Treasury Board itself, led by its president. I urge the government to take that suggestion into consideration so we can have, hopefully, a satisfactory explanation.

Honourable senators, the purpose here is not to delay the supply bill. That is the last thing on our minds. The purpose is to ensure that the supply bill we are passing does not include amounts that have not been authorized or which are ineligible.

Honourable senators, to focus attention on what we are trying to do over here, I should like to suggest an amendment that simply reduces, where appropriate, \$50 million from grand totals and \$25 million from each department. Senators will have to bear with me as I read all of these amounts because they appear in four or five different places. Again, the amendment reduces the supply being requested by \$50 million in total and reduce one department's by \$25 million and the other department by the same amount.

Therefore, I move, seconded by Senator Buchanan:

That the amount of \$4,829,997,679 shown in clause 2, line 30, be amended to read: \$4,779,997,679;

That the amount of \$4,484,236.584 shown under Schedule 1, on page 4, be amended to read: \$4,434,231.584;

That the amounts of 60,050,603 and 145,084,677 shown under the heading Environment on page 8 be amended to read: 35,050,603 and 120,084,677;

That the amounts of 58,150,000 and 129,253,554 shown under the heading National Resources on page 22 be amended to read: 33,150,000 and 104,253,554; and

That the amount of 4,484,236.584 shown as a total on page 32 be amended to read: 4,434,236.584.

The Hon. the Speaker *pro tempore*: Honourable senators, before I read the amendment, I must go to *Beauchesne's Parliamentary Rules & Forms*, sixth edition, citation 666 under the heading "Amendments at Second Reading." It states:

There are three types of amendments that may be proposed at the second reading stage of a bill. These are:

1. the hoist (e.g. three months six. months).
2. the reasoned amendment.
3. the referral of the subject-matter to a committee.

I need leave from the house to read this amendment. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Hon. Lowell Murray: Why is leave required?

The Hon. the Speaker *pro tempore*: It is required according to Beauchesne, citation 666, the amendments to the second reading of a bill.

Senator Murray: Is Her Honour ruling Senator Lynch-Staunton's amendment out of order?

Hon. the Speaker *pro tempore*: According to this citation, the house must grant leave.

Senator Murray: I do not understand. There may be honourable senators who wish to contribute to the point of order as to whether this is parliamentary practice, of which Beauchesne is only one interpretation. As Her Honour is aware, Beauchesne is not the rules as to whether parliamentary practice permits the kind of amendment that has been put forward by Senator Lynch-Staunton. There may be honourable senators more learned and skilled in these matters than I who would want to contribute to the point of order before Her Honour makes a definitive ruling.

The Hon. the Speaker *pro tempore*: Are there any other senators who wish to speak to the point of order?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I must say that I am surprised that the Chair, not having been asked to make a ruling on any point of order, none having been raised, would go to a House of Commons reference text. Under our rules, the Speaker is to keep order and decorum. I should like to see a reference made to the *Rules of the Senate of Canada* as our starting point. In the *Rules of the Senate of Canada*, there is no rule that obviates the type of amendment brought forward by Senator Lynch-Staunton.

It seems to me we have here an initiative that has not been sought by the government side, certainly not sought from this side. There has been a certain amount of "creepage" where the Speaker *pro tempore* is assuming a role that is not proper to the Chair. The senators run the Senate.

● (1020)

If honourable senators had a problem of order, they would have raised it. No point of order was raised. There is no indication given with this initiative from the Chair as to what rule is being breached in the *Rules of the Senate*. The Speaker *pro tempore* rose and read something out of an interesting textbook written by Beauchesne many years ago that applies to the other place.

What we are dealing with here is the constitutional principle of the Senate being blocked from introducing money bills. However, the application of that principle is such that there is nothing that stops the Senate from reducing monies that are being sought. What we have here is not a request or an initiative from the Senate seeking monies from the public purse; what we have is a supply bill brought in that includes an obvious error. The government is immensely embarrassed by the error.

We on this side made an offer yesterday of how we might expedite the correction of that error. Today, Senator Lynch-Staunton made another suggestion of how to expedite the resolution of the error. We will not sit here and have things swept under the carpet.

Honourable senators, the Chair is taking initiative where no initiative is being sought.

Senator Lynch-Staunton: Who has raised the point of order? No one has raised a point of order; there is no point of order.

Senator Carstairs: I am prepared to say that I rise on a point of order on this matter.

Frankly, it was not appropriate to raise a point of order until the Speaker had put the question. The question had not been put; therefore, there was no opportunity to make the point of order. Perhaps we should put the question and then I will rise on a point of order.

Senator Kinsella: That is anticipation.

[Translation]

Hon. Roch Bolduc: Honourable senators, we have before us an amendment proposed by the Leader of the Opposition for reducing monies requested in the Supplementary Estimates. Honourable senators are well aware that it is not possible to ask for additional funds. We are asking for a reduction of monies, because the government made a mistake and we want it to be corrected.

I do not understand why the Speaker *pro tempore* took it upon herself to explain to us what the act was about. We are waiting for an explanation from the government. Then a decision will be made.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the fact that the Honourable Senator Bolduc spoke to the motion in amendment does not mean that this house must make a decision. Moreover, the issue that was raised should be clarified before we proceed any further.

[English]

Senator Murray: Her Honour may wish to accept the suggestion of the Leader of the Government and put the question, after which she intends to rise on a point of order. At that point, some of us may wish to intervene.

The Hon. the Speaker *pro tempore*: Honourable senators, rule 18(1) says:

The Speaker shall preserve order and decorum in the Senate. In doing so the Speaker may act without a want of order or decorum being brought to his or her attention...

I will also cite *Beauchesne's Parliamentary Rules & Forms*, sixth edition, at paragraph 659:

The second reading is the most important stage through which the bill is required to pass: for its whole principle is then at issue and is affirmed or denied by a vote of the House. It is not regular on this occasion, however, to discuss in detail the clauses of the bill.

The amendments of Senator Lynch-Staunton are clearly directed to the clauses of the bill. Thus, we must first have the bill before us in order to discuss it.

Senator Lynch-Staunton: Honourable senators, this is a bill that does not go to committee, because the work on the bill has been done through Supplementary Estimates. By agreement, let us go to third reading and start all over again there. We will just pass on to third reading.

The Hon. the Speaker *pro tempore*: Are honourable senators ready for the question on second reading of the bill?

Senator Kinsella: Yesterday, we offered an expeditious manner of dealing with this. I am now slightly annoyed. The reason I am slightly annoyed is that I am not certain as to the propriety of the point of order that has been made. I should like to have the opportunity to do some research on this matter. This is not an ordinary bill; it is a supply bill. It does not go from second reading to a committee where we would do clause-by-clause consideration.

A procedural intervention is being sought. I am not sure the interpretation is correct. We do not want to set a precedent here that will tie our hands in the future.

Senator Carstairs: Honourable senators, we are acting quite out of the normal practice and custom of this chamber. The honourable Leader of the Opposition introduced an amendment.

If we were in a point of order, and I do not think we are, I would argue that Beauchesne is very clear. As the Speaker *pro tempore* has pointed out, there are three types of amendments that may be proposed. This is certainly not a hoist motion. We would probably all agree to that. This is not a referral of the subject matter to a committee; we would agree with that. It would have to meet the other test, which is that it would be a reasoned amendment.

In regard to reasoned amendment, Beauchesne, at paragraph 671(2) clearly says:

The amendment must not be concerned in detail with the provisions of the bill upon which it is moved nor anticipate amendments thereto which may be moved...

Senator Lynch-Staunton came up with the perfect solution to this: We will move to third reading. We will then entertain his motion, which at that point will be in order, because it is an amendment to a bill, which he is entitled to make at third reading. That does not indicate any support from this side, but he is certainly entitled to make that amendment at that time, and then we will deal with it in the appropriate fashion. That is the way in which we should proceed.

Senator Lynch-Staunton: Upon reflection, perhaps the best way to proceed would be to go into Committee of the Whole. In that way, Treasury Board officials and, I would hope, the minister would attend upon us. We could do that Monday, Tuesday or Thursday next week, or even early January; the timing is irrelevant to us. However, the point is that we must resolve this question of the \$50 million.

I would move that we approve second reading, agree to go to Committee of the Whole, have the Treasury Board officials come to us and then determine if an amendment is necessary or not. It is my hope that amendments will not be necessary, but only by having the guidance of the officials will we find that out.

• (1030)

Hon. Nicholas W. Taylor: Honourable senators, I wish to speak in support of the Leader of the Government's interpretation. If the honourable senator were to read *Erskine May Parliamentary Practice*, Twenty-second Edition, page 468, on second readings, the honourable senator would follow exactly what Senator Carstairs says about second reading. Erskine May is referencing the House of Lords, which is more common about the House of Commons. The headings on page 468 are the following: "Opposition without amendment," "Delaying amendment," and "Reasoned amendment." The latter is the only one that could qualify, as Senator Carstairs says. Erskine May reads, "A reasoned amendment may be moved to the motion for the second reading. Notice is always given..."

We have a last minute amendment. Senator Carstairs' solution of moving on to third reading is the way to handle it, according to Erskine May, twenty-second edition, page 468.

Senator Kinsella: What is your point?

The Hon. the Speaker pro tempore: Thank you all for your understanding. Is the house ready for the question on second reading of Bill C-45?

Senator Murray: Honourable senators, it appears that the government has not accepted the opposition leader's suggestion that after second reading we proceed to Committee of the Whole. The government has, however, told us that, in their opinion, Senator Lynch-Staunton's amendment would be in order at third reading.

Before we go down that road any farther, I would like to have some word from Her Honour as to whether she agrees that Senator Lynch-Staunton's amendment would be in order at third reading.

Senator Taylor: That is another motion entirely.

The Hon. the Speaker pro tempore: It is my understanding that the amendment could be put at the third reading of the bill, yes.

Is the house ready for the second reading of the bill?

Some Hon. Senators: Question!

Senator Lynch-Staunton: Honourable senators, we are doing our best on this side to resolve an issue that is non-partisan. It is a responsibility of all senators to see that the supply bill is in good order. That is the issue.

The only people who can guide us on this point are the officials from Treasury Board. What is the objection to spending half an hour or 45 minutes having officials of Treasury Board explain to us this kind of accounting, which some of us have difficulty in understanding? They should have opportunity to convince us that this is the right way to do things. It may seem odd. It may not be the way things are done elsewhere, but if this

is the way things are done and have been done by government, then justification is not too much to ask.

The National Finance Committee, in its last report, questioned the generous use of Treasury Board contingency funds and indicated that, perhaps, they are being too generous in the interpretation of the guidelines allowing those advances. The Finance Committee intends to study that practice to find out if they have gone too far.

It is a question of sane financing and proper legislation. That is all it is.

What is the objection to having Treasury Board officials come here? We will not delay unduly. We just want the answers everyone else is looking for, and the only people who can give us those answers are the officials at Treasury Board. If they are right, I should think that they would be eager to come before us to clear the shadow they have been under for a month in both Houses. It is to their advantage to come before us and resolve this issue.

Senator Bolduc: More than that, we had a long discussion with those people. They were not politicians; they were civil servants.

Senator Carstairs: Senator Lynch-Staunton refuses or is unwilling to accept the ruling from the other place, which is, I suppose, appropriate since he does not sit in that House. However, it is very clear that the Speaker in the other place said that this bill is in order. There was no question that the bill was in order at this particular stage.

As far as additional information, I have provided the honourable senator and the entire chamber with the explanation. There is no further explanation. The explanation has been given.

Although it is being argued on the other side that they are not trying to delay the process of providing supply to the government, that is exactly what they are doing.

Senator Lynch-Staunton: Yes, we are delaying the possibility of approving supply that is not in a proper form. Yes, and there is \$50 million at issue. The Speaker of the House did not rule on the bill. He ruled on the propriety of \$50 million being in the Supplementary Estimates. He told the government that he would let the debate on the Estimates go on because there was enough time to take corrective action.

Corrective action was not taken by the admission of the President of the Treasury Board herself, who said that she would put that \$50 million in the next Estimates. Therefore, the question is again, if the President of the Treasury Board will put it into the next Estimates, why is it still in the current Estimates, and in the appropriations bill before us?

Honourable senators, by the admission of the Leader of the Government yesterday, it is there, but they will not use it. If they do not intend to use it, why is it there? The Leader of the Government said yesterday "the government will not use the current appropriation. We will wait until the next round."

Of what good is the authority to give us a right to vote funds that are not required, and which, by the ruling of the House Speaker when the Supplementary Estimates were before the House, were improperly recorded? That is the question, and it has not been answered.

Senator Carstairs: With the greatest of respect, honourable senators, that is not what the Speaker of other place ruled. He ruled that the Estimates were in order, that the bill was in order and that the correction had to be made by March 31, 2002.

Senator Lynch-Staunton: The Speaker did not say that. I wish that the government leader would read his ruling. He did not even speak to the bill. He was not asked for a ruling on the bill. He said that no authority has ever been sought from Parliament for grants totalling \$50 million. This is the Speaker of the House. He goes on to say that the approval being sought in Supplementary Estimates (A) cannot be deemed to include tacit approval for the earlier \$50 million grant. That is his ruling.

The Speaker then goes on to say, "...there remains ample time for the government to take corrective action." The government's corrective action is to put the \$50 million in future Supplementary Estimate. If the government will do that, take it out of these Estimates.

Hon. Terry Stratton: Honourable senators, I move adjournment of the debate.

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker pro tempore: Will those honourable senators in favour of the motion please say "yea?"

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Will those honourable senators opposed to the motion please say "nay?"

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Accordingly, there will be a standing vote. Please call in the senators. There will be a one-hour bell, unless there is agreement for another period.

Hon. Bill Rompkey: Honourable senators, I suggest a half-hour bell.

Senator Stratton: If you give us the Committee of the Whole, we will give you what you want.

The Hon. the Speaker pro tempore: What is the agreement?

Senator Stratton: No agreement. One hour.

The Hon. the Speaker pro tempore: There is no agreement. will be a one-hour bell. Call in the senators.

• (1140)

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	Keon
Atkins	Kinsella
Beaudoin	LeBreton
Bolduc	Lynch-Staunton
Buchanan	Murray
Carney	Nolin
Comeau	Oliver
Di Nino	Prud'homme
Dood	Rivest
Johnson	Stratton—20

NAYS THE HONOURABLE SENATORS

Adams	Hervieux-Payette
Bacon	Hubley
Bryden	Jaffier
Callbeck	Kirby
Carstairs	LaPierre
Chalifoux	Léger
Christensen	Maheu
Cook	Mahovlich
Cools	Milne
Corbin	Morin
Cordy	Phalen
Day	Poulin
De Bané	Poy
Fairbairn	Robichaud
Ferretti Barth	Rompkey
Finestone	Setlakwe
Finnerty	Sibbeston
Fitzpatrick	Stollery
Fraser	Taylor
Furey	Tunney
Gauthier	Watt
Gill	Wiebe—45
Graham	

ABSTENTIONS THE HONOURABLE SENATORS

Roche—1

Senator Stratton: Honourable senators, I rise to speak to the issue of monies being spent by the government. Let us back up for a moment and realize the responsibility that this chamber has.

I have served most of my years as a senator on the National Finance Committee. I have found it to be the most interesting committee, given that we are able to examine the expenditures of any department as part of our responsibilities.

We have always had the problem of lack of time, whether it is just not available or whether we simply do not take the necessary time. We want to examine that closely. There have been discussions in the Rules Committee that each standing committee should take it upon themselves as a responsibility to examine the Estimates of the department that affects their committee. In other words, committee members should do a closer, more detailed examination of the budgetary items that are proposed. We just simply cannot, in all fairness, expect the Standing Senate Committee on National Finance to do it all.

It is now of public note that budgetary items can be pushed through and not dealt with appropriately. All senators in this chamber should be concerned with the amount of money spent and how it is spent. Every department should be examined properly by the committees that have that responsibility. Committees do not do that now. We simply rely on the Standing Senate Committee on National Finance.

By way of example: the Canada Customs and Revenue Agency wanted a \$287.9-million increase over its original appropriation of \$2.4 billion. That is a 12.2 per cent increase. Most of the funding is to address operational workload pressures.

Honourable senators, that issue was not answered appropriately and should have been. We did not have the time, because of time pressures, to delve into those issues. Now is the time. We are talking about a \$50-million line item in the supply bill, of monies that will not be spent, and questions in respect of it were not appropriately answered by the Leader of the Government in the Senate. It is appropriate that we request either a Committee of the Whole or that this matter be referred to the Standing Senate Committee on National Finance to request the presence of officials from Treasury Board to bring forward answers about this line item. If there is no good reason for its inclusion, why did the government let it stand when they indeed had time to remove it after Speaker Milliken brought it to the attention of the government?

That is the issue that we must address. If we do not, then who will? If we can sit here satisfied with the explanation given, we are passing off one of our responsibilities, and I do not think that is why we are here. If we are to do our job and the public is to see us doing our job, then we must examine this issue.

We are asking that this matter be referred to Committee of the Whole or to the Standing Senate Committee on National Finance to be properly dealt with. How long would it take to do that? The

Committee of the Whole could deal with the issue here on Monday. It could be dealt with that quickly, if we have satisfactory answers. That is the appropriate way to show the public that we are indeed being responsible, after the House of Commons did not deal with this issue as it should have dealt with it.

Honourable senators, I ask that this matter be referred to Committee of the Whole.

Hon. Isobel Finnerty: Honourable senators, I am the deputy chairman of that committee and we have a terrific chairman, as I said once before in this chamber. We have examined and debated this issue, and we are confident that we will have corrective action at the end of this fiscal year, March 31, 2002. If we had wanted an amendment, we would have done that in committee. I feel very confident that our committee dealt with this matter in an excellent fashion.

Senator Lynch-Staunton: Honourable senators, may I point out to Senator Finnerty that the report of the Standing Senate Committee on National Finance, under its excellent chairmanship, was tabled after Speaker Milliken ruled but before the President of the Treasury Board made her statement.

Senator Stratton: If I may, honourable senators, we were not satisfied. We had a discussion, but we were not satisfied.

Senator Carstairs: The committee passed the report.

Senator Stratton: Yes, we did, but that does not necessarily mean we were satisfied. That is the problem with our efforts in this chamber. We are not spending enough time examining details because we are pressured to push and get things done. That is why committees should be given the responsibility to look after the cost items for each of the departments for which they are responsible.

• (1150)

Senator Taylor: The committee made a report.

Senator Finnerty: Honourable senators, the committee prepared an excellent report in which we condemned some of the actions. We expect to have reply by March 31 on this issue. The committee spent hours listening to the evidence of officials and even more hours in the preparation of this report. I am satisfied, as are the committee members on this side, that corrective action will be taken.

Senator Lynch-Staunton: There is something wrong now.

Senator Stratton: Is the honourable senator satisfied with the fact that we are spending \$689 million on gun control when the minister responsible promised and assured us that \$85 million would be the maximum amount and that that would be paid back through recoverable fees?

Hon. Francis William Mahovlich: Honourable senators, as a member of the Finance Committee I recall that number of \$50 million being mentioned. We painstakingly prepared the report, discussed it, and it was placed before the Finance Committee. It was then discussed again. However, the \$50 million might have been entered on the wrong side of the ledger. The matter was rectified and the bill was passed. The committee was very satisfied.

Senator Murray: Honourable senators, I do not want and will not let much light come between me and my deputy chairman and other members of the Standing Senate Committee on National Finance. However, we are discussing several different issues here. The fact is that the committee did, as honourable senators have said, examine this situation very closely. We asked all the right questions, I believe, of the officials. We had before us the ruling of Mr. Speaker Milliken and we reported, as the Senate is aware, on the matter.

We observed that the Speaker had said that the Estimates could go forward and that it was not too late to take corrective action. We then reported. On the very day we reported, Madam Robillard, the President of the Treasury Board, indicated what the corrective action would be. The corrective action would be to put the \$50 million, if that is the number, in Supplementary Estimates (B) later. I think we are all agreed on that.

The issue that Senator Lynch-Staunton raises, I think with good reason, is that the supply bill that we received, which has been debated here and which we are now debating in second reading, should have reflected the undertaking of Minister Robillard. The supply bill should be for some \$50 million less than it is. That is a different issue. That is the issue that is before us as a result of Senator Lynch-Staunton's intervention.

Hon. Anne C. Cools: Honourable senators, I have been following the debate with some interest. I have been trying to get a proper understanding of what it is that Senator Stratton is proposing.

I have said this many times before. The process of supply in the Senate is different from the process of supply in the House of Commons. The process that we follow here in the Senate is that we have assigned a committee called the Standing Senate Committee on National Finance, a standing committee dedicated explicitly, exhaustively, to the business of studying supply. It is a committee that many honourable senators have served on for many years with great zeal and great distinction.

Honourable senators, we uphold the principles and the practices of how we treat supply in this chamber, and we to adhere to the principles of committee study as outlined by Sir Reginald Palgrave, one of the great parliamentary authorities on Parliamentary process and on the purpose of committees, that the business of a committee is to assist the chamber in consideration of the issues. It is my clear understanding that that is what the Standing Senate Committee on National Finance has done.

The fact of the matter is that these issues were placed before the committee. They were thoroughly questioned, debated and considered in the committee. At the end of that process, the committee made a report under the distinguished leadership of

our esteemed colleagues Senator Murray and Senator Finnelly. The committee recommended what it thought was its best opinion.

That report made no recommendations whatsoever of the ilk that Senator Stratton, Senator Lynch-Staunton and others, are proposing.

Some Hon. Senators: Hear, hear!

Senator Cools: The fact of the matter is that if Senator Stratton had made such proposals in the committee, or even hinted at such consideration, I am absolutely certain that our esteemed colleagues on this side would have given him every consideration and would have listened to him with the respect that he is owed as a former chairman of that committee. Senator Stratton knows that he and I worked together in a very cooperative way when he was chairman and I was deputy chairman.

Honourable senators, I want it to be crystal clear for the record and that we understand that the questions that have been raised here were considered, debated, settled and decided upon in the committee. What we are dealing with here is a kind of interesting, peculiar and bizarre strategy and technique aimed at attempting to move a motion to reduce supply for the government, with certain senators taking a very righteous and indignant posture.

Since time is short, I will address the business of reasoned amendments, hoists, and so on. I will speak to Speaker Milliken's ruling.

Honourable senators, this is a supply bill. This is an appropriations bill. The comments about reasoned amendments and hoists are absolutely irrelevant and of no application in these circumstances. The sooner we would have said that, the better off we would have been.

As to what the minister in the House of Commons and Speaker Milliken had to say, I must remind honourable senators that, if the House of Commons had shared the concerns that Senator Lynch-Staunton is raising, the proper way for them to communicate these concerns to us would have been by a message. The House of Commons sent us no message. Consequently, there is no message before us and we do not have anything to deal with.

Having said that, honourable senators, the matter was discussed, debated, considered, answered and settled.

Some Hon. Senators: Hear, hear!

[Translation]

Senator Bolduc: Honourable senators, I do not understand why the government is being so stubborn about this. We can understand a disagreement over partisan matters. It is war or peace, and we debate it, but this is not the case here. This is about an administrative policy. It is an error from the point of view of administrative policy. Ms Robillard is responsible for administrative policy. She has behaved like some sort of schoolmistress. It is as though she were saying: "You are making mistakes, but I will not tell you what they are!" Really. What sort of nonsense is this! What we want is for this to be put right. An

administrative correction would not be a big deal! It could be sorted out in 15 minutes in the Senate if she were to come.

The Hon. the Speaker *pro tempore*: Honourable senators, is it your pleasure to adopt the motion?

Hon. Senators: Agreed.

Hon. Senators: No.

The Hon. the Speaker *pro tempore*: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: Will those honourable senators who are opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore*: Please call in the senators.

Is there an agreement as to how long the bells will ring?

English]

Senator Stratton: Honourable senators, I suggest that the vote be deferred to Monday at 5:30 p.m.

Senator Rompkey: If there is agreement, we could defer the vote to three o'clock on Monday.

The Hon. the Speaker *pro tempore*: Is it agreed, honourable senators, to defer the vote to three o'clock on Monday?

Senator Stratton: We may already have a vote at three o'clock. Therefore, according to the rules, we should defer this vote to 5:30 p.m.

• (1200)

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING—MOTION IN
AMENDMENT—VOTE DEFERRED

Hon. Eymard G. Corbin: moved the third reading of Bill C-6, to amend the International Boundary Waters Treaty Act.

He said: Honourable senators, I am pleased to address the Senate on third reading of Bill C-6, to amend the International Boundary Waters Treaty Act, which implements our obligations under the Boundary Waters Treaty.

I wish to thank all honourable senators who attended the Standing Senate Committee on Foreign Affairs and participated in its careful consideration of Bill C-6. Testimony by the witnesses generated a vigorous and, at times, intense discussion. Departmental officials present throughout the committee sessions helped to clarify complex aspects of the legislation, and I thank them also.

There is a strong consensus in Canada that all levels of government should take action to assure the long-term security and integrity of our fresh water resources. Bill C-6 represents the fulfilment of the Canadian government's commitment to take action within its jurisdiction to address the issue of bulk water removal. As part of the overall national strategy to protect our water, all provinces have passed or are in the process of passing legislation and/or regulations that protect their waters from bulk water removal. It is now time for the federal government to demonstrate its commitment to protecting water under its jurisdiction. I hope that there will be the same degree of support on the part of the electorate for provincial initiatives in their field of jurisdiction.

[Translation]

When Bill C-6 was considered in committee, it became increasingly apparent that Canada had no specific legislation to allow us to respect our bilateral commitments under the Boundary Waters Treaty, a treaty that has protected national interests on both sides for more than 90 years. Bill C-6 affords us an opportunity to correct this situation by strengthening the existing implementing legislation and by renewing our commitments laid out in the treaty.

Canada's strategy is to prohibit the bulk removal of water from all of the major watersheds in Canada. This environmentally friendly approach protects waters in their natural state within watersheds. It is a global approach, a green approach that fulfils our constitutional responsibilities and our international trade commitments under the terms of the Boundary Waters Treaty. It is, in fact, the reason the bill was introduced.

Some have said that the federal government should introduce unilateral measures prohibiting all water exports. This type of approach, based on trade considerations, is wrong. It is also unrealistic, particularly in the federal-provincial context, and finally, it would be ineffective. What is even worse is that it would take away from the objective that we are aiming for collectively.

[English]

The purpose of Bill C-6, embodied in clause 13, is to prohibit the bulk removal of boundary waters from their drainage basins. The intent of the prohibition is to meet our treaty obligations, not to affect levels and flows on the United States side of the boundary. It will also provide a significant degree of protection to the natural ecosystems and communities that depend on a sustainable supply of water within the basin. The prohibition removes from the licensing regime bulk removals out of water basins and imposes a prohibition on such projects binding on the government.

There are limited exceptions in the proposed regulations for safety; operation of a ship, vehicle or aircraft; short-term firefighting and humanitarian uses; and for the manufacture of products within the basin from which the water was removed, as this practice has been permitted under the Boundary Waters Treaty historically and is regulated by the provinces.

The exceptions are contained in proposed regulations to permit effective, continued application of the prohibition as set out in the legislation in cases and uses not currently envisaged. It is clear that there is no other intention.

In my remarks at second reading, I cautioned against the temptation of reading too much into the bill, of going beyond the parameters of the treaty. As we discussed in the Standing Senate Committee on Foreign Affairs, there are existing safeguards and oversights that would prevent future governments from negating the purpose of Bill C-6, including the interpretive review by the International Joint Commission of any project affecting the level or flow of boundary waters.

The licensing regime for water diversions within basins is separate from the prohibition provision and codifies the current approval process of the Government of Canada for projects falling under articles 3 and 4 of the treaty. As a result, the licensing approval process would confer no new powers on the government and would not increase Canada's vulnerability to trade challenges under NAFTA.

[Translation]

In its "Interim Report on the Protection of the Waters of the Great Lakes," the International Joint Commission found that it is unlikely that water in its natural state would be included within the scope of trade agreements since it is not a product or good. This opinion is based on the advice of Canadian and American trade law experts.

The commission concluded that trade agreements did not prevent Canada and the United States from taking measures to protect their water resources. The committee also examined the constitutional basis for the bill. For more certainty, the bill establishes the treaty as authoritative in matters of obligations arising under treaties between the empire and other countries, section 132 of the Constitution.

[English]

In the years ahead, the Boundary Waters Treaty will continue to operate as a critical instrument in protecting Canada's national interests. By adopting Bill C-6, Parliament sets down in law a binding prohibition on bulk water removal from waters under federal jurisdiction. This will strengthen our commitment to the treaty and ensure the future security of Canada's fresh water resources.

Honourable senators, I hope I have addressed your concerns and I urge you to support Bill C-6.

[Senator Corbin]

• (1210)

Hon. Pat Carney: Honourable senators, I am delighted to speak on third reading of Bill C-6, to amend the International Boundary Waters Treaty Act. The debate in this chamber and in committee has been an exemplary example of the Senate at its best — and my colleague Senator Corbin would likely agree — where the government proposes legislation for scrutiny by the chamber of sober second thought, and the opposition suggests improvements through amendments with a view to creating better legislation to serve the interests of Canadians.

I should like to thank first my Conservative colleagues for their cooperation and valuable contributions to the process, including Senator Murray, Senator Andreychuk, Senator Spivak, Senator Bolduc, and Senator Di Nino. I would also like to thank the bill's sponsor, Senator Corbin, for his courtesy in considering our argument, and Senator Stollery, Chairman of the Standing Senate Committee on Foreign Affairs, for his even-handed conduct of the committee meetings which were quite — as Senator Corbin pointed out — intense but never nasty.

I should also like to extend our appreciation to the expert witnesses who appeared before us, often at great inconvenience to themselves, and to the minister and his officials who made themselves available to our committee at a very busy time in parliamentary affairs.

Senator Corbin has, in his presentation at third reading, cautioned us against reading too much into this bill. Our problem is that there is not enough in this bill. All of the power to effect the intent of the bill is left in the hands of the minister and her officials through regulation.

Senator Corbin assures us that this legislation is binding. In fact, there is nothing in this bill that would bind the government to the goal set out in the bill. I intend to speak to that.

The government has described Bill C-6 as merely a housekeeping bill to formalize informal practices that have developed over the near-century since the original legislation was passed in 1910. The Minister of Foreign Affairs told us in committee that:

The purpose of the bill is to give a legislative context to the treaty and to make clear what the federal government's position is on the removal of water in its natural state from within the basin.

That is what he said to us. However, it is not clear to us that the proposed legislation achieves this goal, whatever the government's intent. We agree with the intent, but the intent is not spelled out or contained in the legislation itself. It is suggested in regulations which can be changed in secret without Parliament.

We will be proposing amendments that we believe will assist the minister in achieving his goals by clarifying his intent, limiting unanticipated risks and making the process less discretionary and more transparent by ensuring the law is applied within the discipline of Parliament. In short, our goal on this side of the chamber is to be helpful in reassuring Canadians that their fresh water resources are being adequately protected.

Before we address our concerns, let me identify some strengths of the bill. One is the proposed enforcement provision. Professor Ruth Sullivan, a respected expert on legislative drafting, told us:

The bill is definitely an improvement over the existing act, as the existing Boundary Waters Treaty Act was virtually unenforceable. Its only enforcement mechanism appears to be a private action by an individual who has been aggrieved by some action contrary to the treaty. This bill is an important step forward in that sense.

She added:

This is quite an important feature since many of these actions that might divert water would be actions undertaken by a Crown corporation, for instance, or by some agency of government.

Other witnesses told us that if the intent of the bill is in fact to prohibit bulk exports of fresh water resources in boundary waters under federal or international jurisdiction, it is better to focus on basin removals, rather than export bans. We discussed that in the committee. We will let the government speak to its strengths. Our role is to identify our concerns and propose our remedies.

In my speech on second reading, I described Bill C-6 as a sleeper, drafted in a manner which could result in the complete opposite of its stated objective, which is — as Senator Corbin said — to limit bulk water exports. That objective is supported by many Canadians, including myself. In fact, we have pointed out that Bill C-6 as written could actually be used to permit some bulk water exports where no such permission now exists.

Some Canadians, of course, support fresh water exports from Canada to our neighbours — that is what you hear on the hotline shows — but that is not the issue here. The issue is whether the bill meets its stated objectives. The concerns that I raised on second reading, I can assure you, have been supported in the testimony of the witnesses before us.

For instance, trade lawyer Barry Appleton told us:

If the bill were to deal with fresh water issues as part of an overall strategy, I would say that Bill C-6 is flawed. Rather than create the opportunity to develop some environmentally sustainable comprehensive water policy, this bill has created a mechanism to actually licence, in certain circumstances, water going from Canada to the United States. I am sure that is not the intention; however, under the wording of this bill it is clearly the effect.

Dr. Howard Mann, another expert in this field, said he agreed with Mr. Appleton.

Further, Dr. Mann, who is an Ottawa-based lawyer and policy consultant, specializing in international, environmental and trade law, stated:

This is a serious risk...Once exports begin, the government, federal or provincial, cannot arbitrarily deny further exports. Any denial of exports would have to be in accordance with trade law, including chapter 11.

Chapter 11 is, of course, the infamous chapter dealing with national treatment that would allow Mexico and the United States certain access to our water resources.

He continues:

You are into the game as soon as you start down that road.

That means regulatory structures and environmental impact assessment requirements absolutely must be in place and applied before any exports might be made, before licences might be issued. That applies under any use that might be licensed under Bill C-6. Once you start, you are in it and you cannot back out because you feel like it.

When I questioned University of Calgary law professor Nigel Bankes, I asked:

Can this bill, as presently drafted, which gives discretionary power to the Governor in Council, and also to the regulatory process, be used to licence the export of bulk water from boundary waters?

...

Would removal of waters for irrigation purposes to the United States be allowed in this case if you could show, by an environmental assessment or other means, that it did not affect boundary levels?

Dr. Bankes said, "I think the answer is yes."

So there was a lot of support for our concern.

Another concern we have is the failure of the bill to define what constitutes bulk water. There is no definition in this bill of the term "bulk water removals." The definition section of the bill deals only with the terms "boundary waters," "licence" and "minister." Every other term in Bill C-6 is left for the minister to define, a huge example of ministerial discretion, as our witnesses pointed out.

• (1220)

The draft regulations contain a certain figure but, as we know, regulations can be easily changed without the scrutiny of Parliament. When asked about this omission, the minister stated, "I do not understand the point about bulk. We are dealing with the removal of water. If it is not in bulk, what is it? Is it by the cup?" That, of course, is my point. Without a definition in the bill itself, the removal of a cupful of water could be the issue. Other witnesses pointed out that the lack of definitions in this bill opens a host of problems.

A serious concern we raised earlier dealt with the possible trade implications to Canada that could be triggered by this bill. Specifically, my concern deals with the possible exceptions to the general prohibition on bulk exports, however they may be defined.

Possible exceptions are identified in the Library of Parliament's legislative summary, as mentioned by Senator Corbin, as water used in the production of food and beverages or other exceptions specified in the regulations as set out in subclause 13(4). Senator Corbin has referred to the prohibitions in clause 13 but does not include the fact that subclause 13(4) states that these prohibitions do not apply in respect of the exceptions specified in the regulations. Our concern is that the regulations can be written in secret without any parliamentary overview. They are subject to ministerial discretion only.

Does that mean that Canadian fresh water can be exported to food and beverage manufacturers in the U.S.? That raises the whole issue of whether water exports create a tradable good subject to international trade laws. Our witnesses discussed that issue.

We agree with the Canadian government position that the prohibition of bulk water removal from a basin is an environmental issue that is necessary to protect the ecology and the ecological integrity of the international boundary basins. However, while the NAFTA supports this view, it also specifies that unless water in any form has entered into commerce and become a good or product, it is not covered by the provisions of the trade agreement. Once bulk water becomes a product or a manufactured good, this issue is raised.

This issue was addressed by the International Joint Commission. The bill is, we are told, based on the report of the International Joint Commission of February 22, 2000. The commission itself raises this problem, but it does not give a solution to it. It mentions that one issue that was raised by the government in the reference for the study was whether international trade obligations might affect water management in respect of the basin. It explains how the commission commissioned experts to hear about it. The report states:

The Commission believes it is unlikely that water in its natural state, e.g., in a lake, river or aquifer, is included within the scope of any trade agreements since it is not a product or a good. This view is supported by the fact that the NAFTA parties have issued a statement to that effect. When water is "captured" and enters into commerce, it may, however, attract obligations under the GATT, the FTA and NAFTA.

The commission goes on to point out that there are two exceptions. One is the so-called health exception, where there are measures related to protect human, animal, plant life or health. The other is the conservation exception which relates to the conservation of exhaustible natural resources, if such measures

are made effective in conjunction with restrictions on domestic production or consumption.

The commission goes on to point out that these kinds of exceptions are qualified by the requirement that they not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. It goes on to point out that the achievement of a coherent and consistent approach to water conservation and management in the Great Lakes basin, an approach clearly grounded in environmental policy, would be an important step in addressing any trade-related concerns with respect to the use of basin waters.

Since that was the position of the International Joint Commission, one of the omissions in this bill that concerned us was the fact that nowhere in it are the words "environment" or "ecology" used. The minister told us that environmental policies and considerations are driving this bill. We know for a fact that the environment and ecology were not issues back in 1910. Water levels were important for freight, for transport, and for canals, but the environment was not considered. We must take into account that, if the government truly meant this bill to reflect environmental concerns, the government should have used those words in the bill itself. Those terms are barely used, if at all, in the regulations.

Minister Manley told us in committee flatly:

There is nothing in this bill that characterizes water as a tradable good, or could be interpreted to do so.

Several witnesses disagreed with this conclusion. Dr. Howard Mann said:

Bill C-6 is covered by trade law as any other federal act will be. Whether or not you include a trade provision it matters not, trade law applies equally.

Mr. Appleton said:

It does not make a difference whether it...

— referring to fresh water —

...is a good or not....What is relevant is once it goes into commerce, then you create channels of supply, or you have to start looking at the ratio of exports to supply....

Fresh water comes into commerce even under the licensing regime suggested by Bill C-6.

Dr. Mann further stated that, essentially, the issue is whether fresh water is a product. Ultimately, that comes down to the question of whether or not it is in commerce. He said:

...national treatment obligations kick in under trade law as soon as it enters into commerce, not necessarily as soon as it is traded.

Professor Nigel Banks told us:

As water does enter into commerce, whether in the form of bottled water or in another form of commodity, it will be subject to trade disciplines.

This debate is very interesting. It is probably the best debate this chamber has ever heard. Senator LaPierre is waving and conducting —

Senator LaPierre: The music of your words.

Senator Carney: The music of my words?

Senator LaPierre: Yes, ma'am.

Senator Carney: That is in keeping with the harmony of this place today. If you are seeking to divert me from the purpose of the bill, Senator LaPierre, you will fail.

I want to move on to some of the issues that form the basis of our concern and of our proposed amendments. One is the huge regulatory and ministerial discretion powers that are enshrined in this bill. That means it is not binding on the government.

Senator Corbin addressed the fact that there is a concern about water in Canada. Michael Hart, who is a trade policy expert who worked with me on the Free Trade Agreement, said

The hidden agenda behind this legislation is the perception in certain quarters of the public that there is a trade agreement problem and that Canadian agreements might, at some point in the future, require Canada to sell waters to customers outside of Canada in a way that we are unprepared to sell it.

I have mentioned the other issues. Our amendments hope to limit the scope of the government in this regard so that this fear is dealt with up front.

• (1230)

In terms of the extraordinary regulation power contained in this bill, I should like to point out some of the concerns raised by Professor Sullivan and others. This is an independent expert. Professor Sullivan said:

The discretion conferred on the minister is quite extraordinary in my view. There is little in the bill itself to control that discretion. There is the treaty and various provisions in the treaty that might be appealed to, to narrow the discretion of the minister. For the most part, it is untrammelled discretion.

I caution senators to think of how dangerous that could be in the wrong hands.

Professor Sullivan also said the following with respect to the excessive regulatory power in the bill.

There is no legal limit on what can be done in this case on excessive regulatory power in the bill. Parliament chooses to delegate and it can delegate the shop; there is no limit.

From a legal perspective, there is no objection to what is happening in this bill. It is purely a political judgment, whether this is an appropriate exercise of the delegation making authority on the part of Parliament.

Of course, that is our concern.

Dealing with the idea of what constitutes a use and obstruction or diversion or work under this act, Professor Sullivan says this:

This, I gather, is a disturbing provision in that clearly it is enabling the cabinet to enlarge or shrink on the face of it the scope of the prohibition set out in clause 11.

She also added, in talking about other bills — and I would remind Senator Taylor that this is important to his province — the following:

What I notice is that sometimes the minister's discretion cannot operate until regulations are in place, but that is not the case here. Here, the minister can act, grant licences, fix the terms and conditions of licences and withdraw the licences — in fact, the minister can do any of these things without benefit of guidance by regulations. How he exercises his power or why he is exercising it does not even have to be public.

I shall leave others in my party to deal with some of the problems raised in this bill. Basically, I want to assure honourable senators that the amendments we are proposing on this bill address the concerns of witnesses and support the minister's intent. If this were a situation where a minister said, "This is what I intend to do," but the bill did not support that, then I think it would be useful to consider amendments that would in fact achieve the minister's objectives.

I should point out that the minister told us that one would have to be a believer in conspiracy theory to think that this bill could be used for purposes other than its stated intent. I want to assure honourable senators that we are not conspiracy theorists on this side of the house; however, we are experienced in reading legislation. We live with the results of legislation that does not adequately express or implement its intent; therefore, we hope to remedy that matter in the proposed amendments.

The reason for the amendments was outlined in committee. I do not intend to go over the rationale in great detail here, except to say that the primary intent of our amendments is the following: to define bulk water, since that is what the bill is about; to limit ministerial discretion to license or use or divert water; and to put in the bill what is now in the proposed regulations — to take the intent out of the regulations, which can be changed, and place it in the bill and to deal with the environmental issue, that is, to place in the bill some reference to a stated objective, which is to contribute to the environment.

Honourable senators, it seems strange to introduce a bill — and Senator Andreychuk and Senator Spivak have made this point — and to say that it is necessary for environmental reasons and to carry out our environmental obligations, when, in fact, the bill does not mention the word "environment" or "ecology" whatsoever. Therefore, it would be hard for future parliaments to determine what it was that we intended in this place.

Finally, before I speak to my amendments, I wish to point out that this issue is something that will come back to haunt us. This bill is so defective, so unclear and ambiguous, leaving so much excessive power in the executive hands, that it can be used for purposes for which Canadians may not agree. I urge honourable senators to consider the fact that with respect to this bill the record will show that the Liberal government knew that the bill gave powers to the government to export water in secret, without public scrutiny. The record will show that the evidence was presented and was well understood and that the government decided to proceed with this bill in the face of that evidence. That will come back to haunt you.

MOTION IN AMENDMENT

Hon. Pat Carney: Honourable senators, I move, seconded by Senator Di Nino:

That Bill C-6 be not now read a third time but that it be amended, in clause 1.

(a) on page 1.

(i) by adding after line 14 the following:

“removal of boundary waters in bulk” means the removal of water from boundary waters and taking it outside the water basin in which the boundary waters are located

(a) by means of any natural or artificial diversion, such as a pipeline, canal, tunnel, aqueduct or channel; or

(b) by any other means by which more than 50,000 L of boundary waters are taken outside the water basin per day.”, and

(ii) by replacing lines 24 and 25 with the following:

“sanitary purposes.”;

(b) on page 2.

(i) by replacing line 1 with the following:

“12. Except in accordance with a licence.”,

(ii) by deleting lines 11 and 12.

(iii) by replacing lines 14 to 17 with the following:

“use or divert boundary waters by the removal of boundary waters in bulk.”,

(iv) by replacing lines 18 to 26 with the following:

“(2) For the purpose of subsection (1) and the application of the treaty, the removal of boundary waters in bulk is deemed, given the cumulative effect of removals of boundary waters outside their water

basins, to affect the natural level or flow of the boundary waters on the other side of the international boundary and to have a negative environmental impact.”.

(v) by replacing lines 27 and 28 with the following:

“(3) Subsection (1) applies only in respect of the portion of the following water basins that is located in Canada:

(a) Great Lakes — St. Lawrence Basin, being composed of the area of land that drains into the Great Lakes or the St. Lawrence River;

(b) Hudson Bay Basin, being composed of the area of land that drains into Hudson Bay; and

(c) St. John — St. Croix Basin, being composed of the area of land that drains into the St. John River or the St. Croix River.”, and

(vi) by replacing lines 29 and 30 with the following:

“(4) Subsection (1) does not apply to boundary waters used

(a) as ballast in a vehicle, vessel or aircraft, for the operation of the vehicle, vessel or aircraft, or for people, animals or products on the vehicle, vessel or aircraft; or

(b) for firefighting or humanitarian purposes in short-term situations in a non-commercial project.”;

(c) on page 4.

(i) by deleting lines 13 to 22, and

(ii) by renumbering paragraphs 21(1)(e) to (m) as paragraphs 21(1)(a) to (i), and any cross-references thereto accordingly.

• (1240)

That is my proposed amendment.

The Hon. the Speaker pro tempore: Has Senator Carney finished her speech? Does she wish to continue and have me put her motion in amendment after her speech?

Senator Carney: I have finished my speech.

Hon. Laurier L. LaPierre: Perhaps Her Honour could explain to me, please, as an ignorant peasant, what the 15-minute rule means and when it applies?

The Hon. the Speaker pro tempore: One must read the question.

Senator LaPierre: I have asked the question.

The Hon. the Speaker *pro tempore*: The honourable senator has 45 minutes, and she must also read the motion in amendment.

It was moved by the Honourable Senator Carney, seconded by the Honourable Senator Di Nino:

That Bill C-6 be not now read the third time, but that it be amended, in clause 1

(a) on page 1,

(i) by adding after line 14 the following —

Senator Taylor: Dispense!

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: Would those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: Would those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: In my opinion, the "nays" have it.

Call in the senators.

Is there agreement on a time for the vote?

Hon. Terry Stratton: Honourable senators, I should like to defer the vote until Monday at 5:30 p.m.

The Hon. the Speaker *pro tempore*: Is it agreed that the vote be deferred to Monday at 5:30?

Hon. Bill Rompkey: Would the honourable senator agree to 4:30?

Senator Stratton: Agreed.

The Hon. the Speaker *pro tempore*: The vote will be held next Monday at 4:30 p.m.

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Graham, P.C., seconded by the Honourable Senator

Rompkey, P.C., for the second reading of Bill C-35, to amend the Foreign Missions and International Organizations Act.

Hon. Terry Stratton: Honourable senators, it is a pleasure to rise today to join in the second reading debate on Bill C-35, to amend the Foreign Missions and International Organizations Act.

Senator Graham, who has spoken for the government on second reading, has carefully set out the provisions of this bill for us. I must admit that if the bill actually does what Senator Graham believes it does, then we have little with which to be concerned.

However, we cannot ignore the fact that this bill is one bill that was given careful scrutiny in the other place before it was sent to us. Amendments were attempted by both the Canadian Alliance and the Progressive Conservative Party to require parliamentary review and a more narrow focus on the bill; but, alas, as we have seen many times before, the Liberal majority made short work of those amendments by voting them down.

It has been said by those who are familiar with this bill that it is part of a trio of bills brought in by the government to appropriate to itself more power and to increase police powers so that when there are future world gatherings on Canadian soil, as we will have next summer with the G8 meeting in Kananaskis outside Calgary, that demonstrators or protestors will be kept in close check. Therefore, when we are scrutinizing Bill C-35, it is important that we remember Bill C-36, the anti-terrorism bill, and Bill C-42, the real government power grab, otherwise known as the public security bill.

Because Senator Graham has done such a good job explaining the contents of the bill, I will spend my time today getting on the public record some of the concerns this side intends to raise in committee.

This bill expands the capacity of the government to grant immunity from Canadian criminal law to foreign representatives in Canada. Diplomatic immunity from prosecution will now be extended to foreign representatives at international conferences. The Minister of Foreign Affairs will have new powers to allow foreign representatives into Canada regardless of their criminal past and without the rigorous checking that could be brought to bear by Immigration Canada.

Why would the government do this just 10 months after one woman was killed and another seriously injured by a car driven by an intoxicated Russian diplomat? It was his third impaired driving offence, but he was still on the road. I would have thought the government would have used this opportunity to get tough with foreign representatives in Canada, not more lenient. It must be of little comfort to the families of these two women that this government, following this tragic accident and in the first piece of legislation it introduces dealing with foreign leaders coming to Canada, would seek to expand the tax immunities on imported alcohol. That will no doubt increase the amount of alcohol imported into the country, which could send the message that excessive alcohol consumption is acceptable.

Bill C-36, now before us at third reading, and Bill C-42, the public security bill, at second reading in the other place, are supposedly designed to implement new security measures in our fight against terrorism. However, with Bill C-35, the government seeks to expand the number of foreign diplomats eligible for immunity, thus creating at least the potential for significant security risks.

I believe we must ask why the ministerial permits are required only in cases where the diplomat has been charged with war crimes or crimes against humanity. This is in contrast to the law as it stands at present, where ministerial permits are required for any diplomat with a criminal record who enters Canada.

Honourable senators, this bill loosens the current immigration regime while the government searches for ways to restrict access to our borders. It increases the number of diplomats entering Canada who will be exempt from our laws, while this government, in Bill C-36 and Bill C-42, wants to drastically increase the laws to which Canadians are subject. Why is the government taking such opposite approaches when it comes to ensuring the security of Canadians?

Another issue arises when one does a cross-reference of certain provisions of Bill C-35 with those of Bill C-36. Bill C-35, the foreign missions bill, broadly defines internationally protected persons to include foreign state representatives attending meetings of virtually any kind held on Canadian soil. This would have included the APEC summit and will certainly include next summer's G8 meeting, to which I have referred earlier.

Bill C-36 defines interference with protected persons, visiting diplomats, not just as criminal acts but as terrorist acts. It states that anyone who commits a violent attack on the official's premises, private accommodation or means of transport of an internationally protected person that is likely to endanger that person's life or liberty, has committed a terrorist act.

Is blocking a road on the way to a summit a terrorist act? Is pushing against a chain-link fence a terrorist act? When combined with the arrest and detention clauses of Bill C-36, the combination of these two bills really does give sweeping new power to the police to deal with protests.

I now want to turn to that part of the bill that appears under the heading "Security of Intergovernmental Conferences."

• (1250)

Bill C-35 explicitly gives the RCMP the power to set up security parameters for international meetings and to decide on the force necessary to deal with protestors or demonstrators. Does this expand police powers to the point where the government is seeking to eliminate legitimate protest? What are the checks and balances that will assure Canadians that these powers will not be abused? Why did the government vote down

an amendment put in the other place that would have ensured that the RCMP would not take direction from the PMO or any other political office in carrying out their security functions at international conferences in Canada? How do the powers given to the police under this bill fit with the conclusions of the Hughes report on the APEC inquiry, which stressed the right to legitimate protest at international meetings?

Honourable senators, these are all interesting issues that we on this side of the Senate look forward to pursuing in committee.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the third time?

On motion of Senator Graham, bill referred to the Standing Senate Committee on Foreign Affairs.

CANADIAN COMMERCIAL CORPORATION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Milne, for the second reading of Bill C-41, to amend the Canadian Commercial Corporation Act.

Hon. Michael A. Meighen: Honourable senators, I am pleased to rise to speak at second reading of Bill C-41, especially since Senator Hervieux-Payette so clearly and succinctly explained to this chamber on Monday of this week the proposed amendments to the Canadian Commercial Corporation Act.

As Senator Hervieux-Payette pointed out, there are three ways in which this bill is proposed to be amended.

[Translation]

The first amendment would separate the functions of the chairperson of the board and those of the president and chief executive officer. This point has long interested the Senate Standing Committee on Banking, Trade and Commerce, and this measure is a step in the right direction. The committee supports the separation of these functions in many instances, and I am pleased to see this initiative included in Bill C-41.

[English]

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

"Expiration

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4."

Hon. Lowell Murray: Honourable senators, I believe I have about one minute left in my speaking time in support of Senator Lynch-Staunton's amendment for a proper sunset clause on this bill.

It must be a sad paradox for all of us that a bill intended to increase and improve the security of our country has also had the effect of increasing the sense of personal insecurity felt by many Canadians. We have heard much of this in our special committee, both at the pre-study stage and when we had the actual bill before us.

This sense of heightened insecurity and vulnerability, this feeling that our laws will no longer afford Canadians the protections they used to afford is felt not only by members of particular ethnic groups — although certain of those spokesmen have made it clear that they feel that most intensely and most keenly — but also by many Canadians, bar associations, civil libertarians, and others who are concerned about the erosion of the rights and freedoms to which Canadians have become accustomed.

I am concerned, however, that the government has not gone further to improve the governance of this corporation and, indeed, of other Crown corporations. The government should have also insisted that all members of the board possess the skills and experience necessary to do the job. As it stands now, boards of Canadian Crown corporations are filled with individuals whose ability to do their jobs is open to question, to say the least.

The Auditor General noted in his report of December 2000 that the functioning and ability of the boards of our Crown corporations is woefully inadequate. When Canadian tax dollars are at stake, this is simply unacceptable. It appears that the government has missed a golden opportunity in this bill to correct this egregious situation.

The second amendment to Bill C-41 allows the Canadian Commercial Corporation to set fees for its services. As it stands now, the corporation must reach an agreement with its customs over the amount of fees to be charged. Allowing the corporation to set its own fees should help to make it a more efficient and cost-effective operation.

The third amendment to Bill C-41, honourable senators, will allow the corporation to borrow up to \$90 million. Currently, the borrowing authority is limited to only \$10 million. While some increase in this amount may be necessary, a nine-fold increase seems somewhat extreme. Indeed, if this amount is really necessary, it is difficult to understand how the corporation can be functioning now without it.

With the increased borrowing authority, there is also the concern that the corporation may support riskier transactions than heretofore. It also opens the door to abuse by suppliers who are able to compete without the corporation's assistance, but who want to take advantage of its deep pockets.

Honourable senators, we on this side support the bill in principle. As outlined, though, we do have a number of concerns and we look forward to the opportunity to thoroughly examine all provisions of this bill when referred to committee.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

Honourable senators, it would be a wonderful reassurance for these people and for the whole country if we were to attach a real sunset clause for all the provisions of the bill. That would have the effect of assuring Canadians that the government understands the gravity of what it is doing with the extraordinary powers contained in this bill for the government and for the authorities, and that the government is absolutely determined to see that these powers are not abused.

I commend a real sunset clause to the consideration of honourable senators.

• 1300

The Hon. the Speaker pro tempore: Would those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Would those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Accordingly, there will be a standing vote. Call in the senators.

Hon. Terry Stratton: There is agreement to hold this vote on Monday, December 16, 2001, at 3:30 p.m.

Hon. Bill Rompkey: That is correct.

[Translation]

YOUTH CRIMINAL JUSTICE ACT

THIRD READING—MOTION IN AMENDMENT— VOTE DEFERRED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, An Act in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

Hon. Pierre Claude Nolin: Honourable senators, by rejecting the report of the Senate Standing Committee on Legal and Constitutional Affairs, honourable senators also rejected a proposed amendment to clause 110 of Bill C-7. The aim of my remarks is to reintroduce this amendment and to indicate the reasons underlying its reintroduction.

The amendment passed in committee provided that, when, at the request of the prosecutor — the Crown prosecutor, that is —

[Senator Murray]

the youth court deems public interest will be better served, the ban on publication of the identity of an adolescent would no longer apply if the young person had been convicted of certain offences. With the support of the majority on committee, we amended clause 110. This amendment, we were satisfied, had undeniable advantages for young Canadians. It is my intention today, to repeat the arguments that have already been made.

You have all heard Senator Carstairs, who did not consider it appropriate to approve this amendment. I do not intend repeating her arguments, which I consider weak. I am satisfied she has not examined the arguments the committee submitted in support of the amendment.

Everything hinges on the following idea: Do we permit publication of the names of young offenders? In this debate, two fundamental values are at odds. On the one hand, we must try to protect society and, on the other, there is the matter of the rehabilitation and reintegration into the community of adolescents. The existing Young Offenders Act strikes a certain balance between these two values, which may appear contradictory. Section 38 of this law bans the publication of information that could identify the young offender. There are exceptions to this principle and the aim of the exceptions is to maintain this balance.

In order for one of the exceptions to apply, the Attorney General, or one of her officers, must apply for a court order. This is a considerable burden for the Crown, since it must demonstrate that it is in the interests of both justice and the young offender for such an exception to apply.

The provisions of the present bill strike me as valuable enough to be retained. Unfortunately, Bill C-7 reverses this burden, creating an automatic mechanism which would mean automatic release of the names of young offenders in four cases. Let us not lose sight of the fact that this is at the sentencing stage, after the young person has been found guilty.

The four cases of automatic publication of the identity of a young offender are as follows: the young offender has been found guilty and sentenced as an adult; a specific penalty for murder, sexual assault or manslaughter; a specific sentence for aggravated assault; an adult sentence after three aggravated assaults.

Honourable senators, do not lose sight of the fact that Bill C-7 calls for the imposition of an adult sentence for young offenders starting at age 14! Thus, Bill C-7 is considerably weaker than the present law.

It is up to the young offender or the Crown Prosecutor to request non-publication and, after investigating, the judge investigates whether or not to issue a publication ban. Most of the committee members felt that this change from the present law was unjustifiable. That is why we presented an amendment to clause 110 in our report.

There were five reasons behind this amendment — this was the case when I spoke during the debate on the report. I will list them again briefly.

First, clause 75, which sets out adult sentencing, is located in the part of the bill that sets out adult sentencing. Second, the burden of proof is on the adolescent. Third, it appears to us as though the second paragraph of clause 110 goes against the principles of Bill C-7. These principles establish that the special needs of adolescents, be it rehabilitation, reintegration into the community, and the existence of a separate criminal justice system for youth, should be recognized. In light of the existence of these very important principles, clause 110 seems to conflict with the bill.

Fourth, we believe that Bill C-7, particularly clause 110 in its original form, would lead to greater stigmatization of young offenders.

I would like to quote from the *R. v. F. N.* Supreme Court decision in 2000, where Justice Binnie states in paragraph 14, and I quote:

Stigmatization or premature "labelling" of a young offender still in his or her formative years is well understood as a problem in the juvenile justice system. A young person once stigmatized as a lawbreaker may, unless given help and redirection, render the stigma a self-fulfilling prophecy. In the long run, society is best protected by preventing recurrence.

• (310)

In connection with this stigmatisation, many young people testified before our committee and confirmed to us what the Supreme Court set out as a principle. On page 10 of the Youth Canada Association's brief, we find the following comment:

By allowing their name to be published, the legislation undermines the principles of rehabilitation and youth criminal justice. We feel that young people must be able to reintegrate society without being stigmatised or risking reprisals from the community.

Once again, clause 110(2) of Bill C-7 could violate Canada's international obligations because, first, it is contrary to article 40 of the UN Convention on the Rights of the Child, to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. This failure to respect international law was raised by various witnesses. Professor Jean Trépanier, of the University of Montreal's Criminology Department, told us:

The fact that it is possible to publish the names in such cases is, at the very least, inconsistent with the spirit of these rules ... Generally speaking, I would say that the spirit of these UN instruments seems to me much more consistent with the general spirit of the Young Offenders Act than with that of the bill, which takes a more traditional criminal law approach.

In the brief from the Human Rights Commission, we read on page 38:

...these growing exceptions to the principle of confidentiality are important departures from the rules of

international law governing the treatment of minors in conflict with the law.

Finally, on page 5 of the brief from the Barreau du Québec, we read:

The Barreau du Québec is still of the opinion that the identity of a young person must not be revealed, especially when he or she is given a specific sentence... Furthermore, this principle is consistent with the spirit of international rules concerning the respect of young people's privacy.

MOTION TO AMEND

Hon. Pierre Claude Nolin: Honourable senators, for all these reasons, I move, seconded by the Honourable Senator Andreychuk:

That the bill be not now read a third time but that it be amended in clause 110, on page 113, by replacing line 29 with the following:

"(2) When the youth justice court, on application of the Attorney General, determines that the public interest will best be served and that the rehabilitation of the young person will not be compromised, subsection (1) does not apply".

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore*: Call in the senators.

Is there agreement on how long the bells will ring?

[English]

Hon. Bill Rompkey: I believe there is agreement to defer the vote to Monday at 3:00 p.m.

Hon. the Speaker *pro tempore*: Is it agreed, honourable senators?

Hon. Senators: Agreed.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, in light of all the work done today and the fact that it is the end of the week, I move that all items on the Order Paper which have not been addressed be stood until the next sitting, with the exception of Item No. 2 under Other Business, Reports of Committees.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Some Hon. Senators: No.

Motion agreed to on division.

[English]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the adoption of the eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (amendments to the Rules—Senators indicted and subject to judicial proceedings) presented in the Senate on December 5, 2001.—(*Honourable Senator Cools*).

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Hon. Anne C. Cools: On division.

Motion agreed to and report adopted, on division.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Prior to the adjournment motion, which I suspect is imminent, I rise on a point of order.

The point of order speaks to the majority that will be required for the vote that is to be taken in respect of Bill C-36, on Monday, pursuant to the house order. The vote is on the amendment of Senator Lynch-Staunton.

Honourable senators, it seems to me that the Senate is currently faced with a somewhat unique situation: A Senate committee has tabled two reports from the same committee, but the principles and the substance of the two reports are standing in contradiction. The motion before us by Senator Lynch-Staunton

simply states that the sunset clause should apply for five years. That is exactly the same principle that is articulated in the first report of the Senate committee that recommended a five-year sunset clause be included in Bill C-36.

Therefore, a ruling is required from the Honourable Speaker *pro tempore* who may take the weekend to reflect on the size of the majority of any vote dealing with third reading of Bill C-36.

This is a unique situation, in that we have two contradictory reports from the Special Senate Committee on Bill C-36. The committee's first report was debated in the full Senate chamber subsequent to the Minister of Justice indicating to the House of Commons Committee on Bill C-36 which amendments she would agree to in referring to the special Senate committee's first report.

• (1320)

This is subsequent to the position of the Minister of Justice being known. The full Senate rejected the position of the Minister of Justice and, rather, adopted the first report of the Special Senate Committee on the Subject Matter of Bill C-36 in its entirety.

The Special Senate Committee on Bill C-36 has now tabled, I submit, with attachments, its second report, which is now before us at third reading, pursuant to the decision of the Speaker of the other day.

The motion that is before us and the one upon which we will be voting on Monday — the motion in amendment by Senator Lynch-Staunton — is 100 per cent congruent with the house order or the decision of the whole Senate taken in the first report.

Therefore, it is submitted that, in order to permit the Senate decision already taken with respect to the amendments to Bill C-36 to be set aside and replaced by a new decision, such a decision by the Senate would require the support of at least two thirds of the senators present in the chamber when such a decision is taken.

In order to help the Speaker adjudicate this matter and identify the principles of parliamentary procedure that underlay this submission, I wish to underscore the following. First, I shall examine rule 63(1), which provides as follows:

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded as hereinafter provided.

What is hereinafter provided is contained in rule 63(2), which I will quote in a moment.

The motion to adopt the second report of the Senate special committee deals with the same substance, namely, Bill C-36, as the motion adopted by the full Senate to the effect that the Senate of Canada decided that Bill C-36 must have certain amendments, including the amendment of a full sunset clause. The effect of the motion to adopt Bill C-36 at third reading without this amendment will be, in effect, to trump or rescind a decision that has already been taken by the Senate in the first report.

Rule 63(2) of the *Rules of the Senate of Canada* provides as follows:

An order, resolution, or other decision of the Senate may be rescinded on five days' notice if at least two-thirds of the Senators present vote in favour of its rescission.

The principle of parliamentary democracy, where the rights of the minority as well as the majority are respected, can be traced at least to April 2, 1604, where the House of Commons at Westminster passed a resolution that stated that a question being once made and carried in the affirmative or the negative cannot be questioned again but, rather, must stand as a judgment of the House. The reference is the *United Kingdom House of Commons Journals*, volume 1, page 162.

Six years later, on June 1, 1610, the House of Commons applied the same principle in dealing with bills when it adopted a motion stating that no bill of the same substance can be brought in the same session. The reference is *House of Commons Journals*, volume 1, page 434.

It is noteworthy, honourable senators, that this rule 63 was first adopted by the Senate on March 31, 1915. Therefore, it has a very long standing in the procedures of this house.

The fact that there are various majorities for various things in this house is also something that must be underscored. The assumption that the only majority is 50 per cent plus one does not meet the test of the reality of the rules. For example, there is a 100 per cent majority test for certain decisions of the Senate. The unanimous consent rule clearly establishes the fact that the Senate makes its decisions by majorities other than that of a majority of 50 per cent plus one. Thus, for example, rule 68(3) provides that a senator may change his or her vote with the unanimous consent of the senators present in the chamber.

Consider, honourable senators, a situation such as that of the abortion bill, which ended in a tie vote, having the effect of the item failing to be adopted by a decision of the Senate. If at that time a senator who had voted against the motion received the unanimous consent of the senators — that is, 100 per cent — to change his or her vote to a vote in favour of the motion, then the first decision of the Senate would have been rescinded and replaced by a new majority decision.

I therefore refer the Speaker to *Bourinot's Parliamentary Procedure*, fourth edition, page 294; *Erskine May Parliamentary Practice*, twenty-first edition, pages 326 to 327; and the Senate Speaker's rulings on February 27, 1991.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I do not see a point of order in the Honourable Senator Kinsella's representations for the simple reason that a special Senate committee examined the content of a bill that was to be introduced later.

The special committee's mandate was to advise the Minister of Justice and the House of Commons committee on the scope of a bill that would deal with terrorism. After hearing many witnesses, the special Senate committee wrote a report that was

sent to the House of Commons committee for consideration. As had been previously agreed, the report was to shed light on what should be included in that bill.

The House of Commons and the minister took into account the recommendations included in that report. The bill was amended accordingly. The version introduced in the House of Commons reflected some of the recommendations. The bill passed in the other place was referred back to us under the completely different guise of a bill.

The Senate committee had to consider a bill in its final form. It therefore had to report the bill to the Senate.

Honourable senators, if we were to make a narrow interpretation of what Senator Kinsella is proposing, we would conclude that it is not recommended for a minister or a government to conduct a pre-study, because we would feel bound by all the recommendations put forward.

The purpose of the pre-study was to provide advice to arrive at a solution that would be final in the other place and then be referred to us for consideration. Honourable senators, this is the process that was followed and this is why I do not see a point of order in what the Honourable Senator Kinsella has said.

[English]

Senator Kinsella: Honourable senators, had the first report of the Senate special committee simply been tabled, my honourable colleague may have an argument. However, it was not simply tabled. It was taken from the Table and a motion was put to the Senate to adopt that report. That report contains the recommendation a five-year sunset clause should be attached to Bill C-36. It is explicit; it is in plain language; and everyone understands what it means.

• (1330)

Senator Lynch-Staunton has moved a motion that says exactly the same thing. We argue that the principles with regard to rescinding a previous decision and the rule that specifies that a senator cannot present the same question in the same session should apply. Equally applicable are the principles that on different kinds of votes a different kind of majority is sometimes applied. I have illustrated this with respect to rule 64 and also with respect to the rule of unanimity.

We are saying that, in this instance, which is unique — it is not ordinary — the principles in our rule book and the principles of parliamentary practice upon which we must draw to apply to this unique situation are such that a two-thirds conviction of honourable senators present will be required in order for a vote to be sustained in this chamber on Bill C-36.

The Hon. the Speaker pro tempore: There being no other honourable senators who wish to speak, I thank the Honourable Senator Kinsella and the Honourable Senator Robichaud for their comments. As Senator Kinsella has said, I now have homework for the weekend. I will take everything into consideration and I will give you my decision as soon as possible.

The Senate adjourned until Monday, December 17, 2001, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
 (1st Session, 37th Parliament)
Friday, December 14, 2001

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10	01/06/14	13/01
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02	01/06/14	14/01
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04	01/06/14	12/01
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01	01/06/14	10/01
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11 + 2 at 3rd 01/06/06	01/06/07	01/10/25	25/01
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15	01/06/14	8/01
S-31	An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	01/09/19	01/10/17	Banking, Trade and Commerce	01/10/25	0	01/11/01		

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-33	An Act to amend the Carriage by Air Act	01/09/25	01/10/16	Transport and Communications	01/11/06	0	01/11/06		
S-34	An Act respecting royal assent to bills passed by the Houses of Parliament	01/10/02	01/10/04	Rules, Procedures and the Rights of Parliament					
GOVERNMENT BILLS (HOUSE OF COMMONS)									
No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources	01/06/06	0	01/06/12	01/06/14	18/01
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources	01/06/06	0	01/06/14	01/06/14	23/01
C-6	An Act to amend the International Boundary Waters Treaty Act	01/10/03	01/11/20	Foreign Affairs	01/12/12	0			
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30	01/09/25	Legal and Constitutional Affairs	01/11/08 negative 01/12/10	11 1 at 3rd 01/12/13			
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	01/06/06	01/06/14	9/01
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs	01/06/07	0	01/06/13	01/06/14	21/01
C-10	An Act respecting the national marine conservation areas of Canada	01/11/28							
C-11	An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger	01/06/14	01/09/27	Social Affairs, Science and Technology	01/10/23	0	01/10/31	01/11/01	27/01
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29	01/06/14	7/01
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	15/01
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications	01/10/18	0	01/10/31	01/11/01	26/01
C-15A	An Act to amend the Criminal Code and to amend other Acts	01/10/23	01/11/06	Legal and Constitutional Affairs					
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance	01/06/07	0	01/06/11	01/06/14	11/01
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance	01/06/12	0	01/06/12	01/06/14	19/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	17/01
C-23	An Act to amend the Competition Act and the Competition Tribunal Act	01/12/11							
C-24	An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts	01/06/14	01/09/26	Legal and Constitutional Affairs	01/12/04	0 + 1 at 3rd	01/12/05		
C-25	An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts	01/06/12	01/06/12	Agriculture and Forestry	01/06/13	0	01/06/14	01/06/14	22/01
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	16/01
C-28	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	01/06/11	01/06/12	—	—	—	01/06/13	01/06/14	20/01
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/06/13	01/06/14	—	—	—	01/06/14	01/06/14	24/01
C-31	An Act to amend the Export Development Act and to make consequential amendments to other Acts	01/10/30	01/11/20	Banking, Trade and Commerce	01/11/27	0	01/12/06		
C-32	An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica	01/10/30	01/11/07	Foreign Affairs	01/11/21	0	01/11/22		
C-33	An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts	01/11/06 (withdrawn 01/11/21)	01/11/27	Energy, the Environment and Natural Resources					
		01/11/22 (reintroduc ed)							
C-34	An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts	01/10/30	01/11/06	Transport and Communications	01/11/27	0	01/11/28		
C-35	An Act to amend the Foreign Missions and International Organizations Act	01/12/05	01/12/14	Foreign Affairs					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-36	An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism	01/11/29	01/11/29	Special Committee on Bill C-36	01/12/10	0			
C-37	An Act to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act	01/12/04							
C-38	An Act to amend the Air Canada Public Participation Act	01/11/20	01/11/28	Transport and Communications	01/12/06	0	01/12/11		
C-39	An Act to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts	01/12/04	01/12/12	Energy, the Environment and Natural Resources					
C-40	An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed, or otherwise ceased to have effect	01/11/06	01/11/20	Legal and Constitutional Affairs	01/12/06	0	01/12/10		
C-41	An Act to amend the Canadian Commercial Corporation Act	01/12/06	01/12/14	Banking, Trade and Commerce					
C-44	An Act to amend the Aeronautics Act	01/12/06	01/12/10	Transport and Communications	01/12/13	0	01/12/14		
C-45	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/12/05							
C-46	An Act to amend the Criminal Code (alcohol ignition interlock device programs)	01/12/10	01/12/12	Committee of the Whole	01/12/12	0	01/12/13		

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5	referred back to Committee 01/10/23		
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications	01/06/05	0	01/06/07		
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Rules, Procedures and the Rights of Parliament					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grolstein)	01/01/31	01/02/08				01/02/08		
							Senate agreed to Commons amendment 01/12/12		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology	01/12/14	0			
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Rules, Procedures and the Rights of Parliament (Committee discharged from consideration—Bill withdrawn 01/10/02)					
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01		
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15		Bill withdrawn pursuant to Commons Speaker's Ruling 01/06/12
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grolstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn 01/05/10)	01/11/27	0			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Energy, the Environment and Natural Resources Transport and Communications					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		(Subject-matter 01/04/26 Social Affairs, Science and Technology)	(01/12/14)				
S-22	An Act to provide for the recognition of the Canadian Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21	01/06/11	Agriculture and Forestry	01/10/31	4	01/11/08		
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02	01/06/05	Transport and Communications					
S-29	An Act to amend the Broadcasting Act (review of decisions) (Sen. Gauthier)	01/06/11	01/10/31	Transport and Communications					
S-30	An Act to amend the Canada Corporations Act (corporations sole) (Sen. Atkins)	01/06/12	01/11/08	Banking, Trade and Commerce					
S-32	An Act to amend the Official Languages Act (fostering of English and French) (Sen. Gauthier)	01/09/19	01/11/20	Legal and Constitutional Affairs					
S-35	An Act to honour Louis Riel and the Métis People (Sen. Chalifoux)	01/12/04							
S-36	An Act respecting Canadian citizenship (Sen. Kinsella)	01/12/04							
S-37	An Act respecting a National Acadian Day (Sen. Comeau)	01/12/13							

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02	01/06/14	
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	
S-28	An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	

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(HANSARD)

Monday, December 17, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Monday, December 17, 2001

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

EFFECT OF TOBACCO TAX ON DUTY FREE INDUSTRY

Hon. Donald H. Oliver: Honourable senators, on June 12 of this year I rose in this chamber to speak in support of Bill C-26, the tobacco tax amendments bill, because I am against smoking and the use of tobacco products. As I indicated at that time, I am also in the favour of the development of good public policy and government initiatives to stimulate business development. At that time, I warned honourable senators about the possible side-effects of the tax to the so-called duty free industry. I warned that the imposition of a tax on duty-free shopping in this country in the form of a \$10 tax on tobacco cartons could do damage to the industry.

Approximately six months later, let us have another look to see what has happened. In effect, the government was to bring down a new tax policy imposed in the name of health policy and to completely ignore Canada's duty free industry. I am informed, in response to my request for an update, that airport duty free operators in Canada and the land border duty free operators say that customers are confused and have stopped buying. Year over year, the range of lost business is between 30 to 40 per cent.

The Hon. the Speaker: Honourable senators, I am sorry to interrupt, but I should like to ask honourable senators to stop conversations or continue them out beyond the bar. It would enable those of us wishing to listen to intervenors to hear them.

Some Hon. Senators: Hear, hear!

Senator Oliver: Year over year, the range of lost business is between 30 and 40 per cent. In a couple of cases, the retail losses are averaging 50 per cent, notwithstanding September 11. We are dealing with 36 land border stores and close to 25 airport stores in Canada.

Bill C-47 was recently introduced in the other place. It states that federal excise taxes on cigarettes will increase by an additional \$2 per carton in Quebec, \$1.60 per carton in Ontario, and \$1.50 per carton in the rest of Canada effective November 2, 2001 — in other words, retroactively. The government is once again saying that this is part of a comprehensive strategy to improve the health of Canadians by discouraging tobacco

consumption. It will also continue to have an effect of reducing the effectiveness of duty free shops.

Honourable senators, as we prepare for our New Year's recess, one of the things we should ask is whether we want to have a duty free program in Canada at all. If we do, perhaps it is time that we had a good, hard look at the consequences of this excessive taxation.

THE ISLAMIC FAITH

Hon. Mobina S. B. Jaffer: Honourable senators, Canadian Muslims and Muslims around the world have been fasting and concentrating on their faith during the month of Ramadan: a time of worship, contemplation and reflection on the need to better understand the faith of Islam. Ramadan is the ninth month of the Muslim calendar. The month of Ramadan is also when it is believed the Holy Quran "was sent down from heaven, a guidance unto men, a declaration of direction, and a means of Salvation."

This week, Muslims all over the world are celebrating Eid ul-Fitr, the "Festival of Breaking the Fast." It is a joyous period in which believing men and women show joy for their health, strength and opportunities of life that Allah has given to them. It is also a period during which Muslims emphasize Islam's framework of ethical principles of sharing, caring, generosity and service to others.

Honourable senators, there may never have been a time when Muslims in Canada have been more aware of their faith and never a time in which Islam needs to be understood more. The Aga Khan, the spiritual leader of the Shia Ismaili Muslims, explained this need in his address at Brown University in June 1996. On that occasion the Aga Khan stated:

Today in the occident the Muslim world is deeply misunderstood by most. The West knows little about its diversity, about the religion or the principles, which unite it, about its brilliant past or its recent trajectory through history. The Muslim world is noted in the West, North America and Europe, more for the violence of certain minorities than for the peacefulness of its faith and the vast majority of its people.

The words "Muslim" and "Islam" have themselves come to conjure the image of anger and lawlessness in the collective consciousness of most western cultures. And the Muslim world has, consequently, become something that the West does not want to think about, does not want to understand, and will associate with only when it is inevitable.

• (1410)

Islam is not a monolithic faith, just as Christianity is not. Islam is a faith practised by over 1 billion people of different cultures, languages, traditions, geographies and civilizations. Islam is a truly pluralistic faith. The pluralism is grounded in a common religion.

Canada is uniquely equipped and positioned to create the understanding to celebrate that pluralism. I am very fortunate to be able to celebrate and practise my faith in Canada.

I know that all honourable senators will join me in wishing Canadian Muslims Eid Mubarak.

Translation]

ROUTINE PROCEEDINGS

ANTI-TERRORISM BILL

THIRD READING—NOTICE OF TIME ALLOCATION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I wish to inform the Senate that it was not possible to reach an agreement on how to dispose of third reading of Bill C-36, and I assure the honourable senators that every effort was made on both sides of the House.

Accordingly, I give notice that, at the next sitting of the Senate, I will move:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration of third reading of Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism;

That, when the debate comes to an end or when the time provided for the consideration of the said motion has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the said motion; and

That any recorded vote or votes on the said question be taken in accordance with rule 39(4).

QUESTION PERIOD

THE SENATE

APPROPRIATION BILL NO. 3, 2001-02— REQUEST FOR INFORMATION

Hon. Pierre Claude Nolin: Honourable senators, my question is for the Leader of the Government in the Senate. Last week, she informed us that she would obtain information about the \$288 million sought by the Canada Customs and Revenue Agency in Supplementary Estimates (A). Does she now have this information?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I asked for leave last Friday at the beginning of the debate on Bill C-45, at which time I read all of that information into the record.

TRANSPORT

AIRLINE INDUSTRY—OPEN SKIES AND CABOTAGE

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate and it is in regard to cabotage.

This government's policies in relation to the airline industry have been often reactive and at cross purposes with promoting a healthy domestic airline industry and competition. It was under this approach that we saw the demise of Canada 3000 and, before that, of Canadian Airlines. It is also under this approach that the government has introduced a \$2.2-billion tax on our domestic airline industry, a tax that, combined with other fees, surcharges and taxes will provide a further disincentive for many to fly by plane. This tax creates a punitive airline security regime relative to its border or marine security counterparts that are funded out of general revenues.

The government has for the most part resisted opening Canadian skies to U.S. carriers as a means to promote a competitive environment. What is the current position of this government with respect to open skies and cabotage?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, Minister Collenette is on the record as indicating that he is willing to discuss any ideas, including open skies, with the airline industry. As always, policies for Canadians, and that includes Canadian airlines, will be made in Canada.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before we proceed with Orders of the Day, I observe that we have a very structured day ahead of us. We will have the following votes: on Order No. 3 at 3:00, with bells to ring at 2:45; on Order No. 2 at 3:30, with bells to ring at 3:15; on Order No. 1 at 4:30, with bells to ring at 4:15; and on Order No. 4 at 5:30, with bells to ring at 5:15 p.m.

Before we proceed with the vote on Bill C-36, it will be necessary for the Speaker to rule on the point of order that was raised on Friday last. I shall do that before 3:15. However, in the event that the ruling takes longer than expected, or if there is an appeal on that ruling and a vote that could potentially require a one-hour bell, these matters will move ahead accordingly.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, we would like to proceed as follows: first of all, Item No. 6, that is resumption of the debate on the motion for second reading of Bill C-37, followed by Items Nos. 7 and 5, returning thereafter to the order as set out in the Order Paper, depending on the votes to come later today.

[English]

CLAIM SETTLEMENTS (ALBERTA AND SASKATCHEWAN) IMPLEMENTATION BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Wiebe, seconded by the Honourable Senator Banks, for the second reading of Bill C-37, to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act.

Hon. Janis G. Johnson: Honourable senators, I am pleased to speak to Bill C-37, the proposed Claim Settlements (Alberta and Saskatchewan) Implementations Act.

As honourable senators may know, this bill is modelled on similar legislation that was passed in October 2000, applying claim settlements in my province of Manitoba. I am sure this proposed legislation will benefit our First Nations greatly in the years to come.

I am pleased to participate in this debate because it is refreshing, especially in these harried days, to see a bill with so little controversy.

• (1420)

As far as I know, there are two good reasons for this absence of strife: First, it is a solid, much-needed and well-thought-out

piece of legislation; and, second, all affected parties were consulted and listened to, it would seem, in the development and drafting process. I commend the government for a job well done.

In fact, as noted by my honourable colleague Senator Wiebe, this bill has come to us, in part, at the insistence of two Alberta First Nations. In the 1998 treaty land entitlement claim settlement agreements of the Alexander and Loon River Cree First Nations, the government promised to create legislation to deal with the difficulties associated with accommodating third-party interests, be they public or private, on land destined to be set apart as reserve land.

Honourable senators, solving these problems — a headache now for some decades — will have two effects: to speed up the reserve creation process, and therefore to allow First Nations to benefit economically more quickly and certainly from third-party interests on land that is to become theirs.

As such, this legislation is urgently needed. There is no need to reiterate here the desperate state of affairs on many reserves, where unemployment is epidemic and Third World conditions continue to exist in the midst of one of the most developed countries in the world. I support any legislation that proposes to assist First Nations through the creation of new economic and job-creating opportunities.

Although this is a technical bill, it is one that promises real, relatively immediate and very human benefits. It will do this by streamlining the process by which First Nation reserve land is expanded in Alberta and Saskatchewan and by which potentially lucrative — for the First Nations — third-party interests are dealt with.

Honourable senators, there are currently 36 treaty land entitlement claim settlements waiting to be completed in the two provinces, representing over 2-million acres of land. The main difficulty is brought on by the inadequacy of current law to deal with third-party interests in respect of lands that may have been selected by a First Nation to fulfil an outstanding treaty or other Crown obligations. These third-party interests may be incidental, or the First Nation may have chosen those particular lands because of the economic benefits that may be derived from the existence of those interests or the possibility of creating others.

Under the Indian Act, third-party interests could only be created on land already set apart by an Order in Council as reserve land. This means that any existing third-party interests must be terminated before the land can be set aside. Although the First Nation, the Crown and the third party may negotiate an agreement to terminate and then reinstate existing third-party rights once reserve status has been acquired, this is a time-consuming process. It is one in which the third party may be understandably nervous, given the uncertainty that would result from termination of its previous rights. Furthermore, the First Nation cannot, at this time, create new third-party interest on lands they select for reserve status. This may mean missed economic opportunities and the inability to compete for these opportunities with private landowners in the area.

[The Hon. the Speaker]

Although the 1993 Saskatchewan Treaty Land Entitlement Act proposed a method for partially dealing with this situation, the Manitoba Claims Settlement Implementation Act was the first to address the possibility of First Nations negotiating new third-party interests during the process of reserve creation — that is, before reserve status has been granted. As I mentioned a few moments ago, Bill C-37 is modelled on Part II of this act, extending its benefits to Manitoba's sister provinces and making small modifications to the latter, as well as to the Saskatchewan Treaty Land Entitlement Act, to make them consistent with Bill C-37.

There are two main provisions in the bill that will facilitate this. The first will enable the minister to set aside lands as reserve, replacing the Order in Council that is currently required. This will allow reserve status to be granted more quickly, thereby easing the backlog of cases waiting for approval, which can take considerable time. Of course, we are always nervous these days when we hear about additions to ministerial authority, but in this case, it is clearly in the best interests of the people affected.

The second major provision of this bill, also taken from the Manitoba Claims Settlement Implementation Act, will enable the minister to accept third-party rights in place of the Governor in Council. In addition, the minister will be authorized to accept First Nation designation of these rights before the land in question has been set aside or even transferred to the federal Crown. This will allow First Nations to choose, with greater certainty, land with existing third-party interests or great potential for that interest. The lessening of bureaucratic red tape also provides certainty to existing third parties and potential investors in future interests. Taken with the greater commercial certainty allowed by the bill's changes to the timing of third-party interests, the reduction of bureaucratic sluggishness will help to reduce the total time between the selection of potential reserve lands and their transfer to the First Nation. It will also hasten the start of economic benefits that come with the granting of pre-reserve designation of third-party interests.

Honourable senators, this last issue is important because claim settlements are often comprised of several parcels of land rather than one large parcel, each necessitating its own accommodation of whatever third-party interests may exist. It is easy to see how implementation of settlement agreements can become bogged down by bureaucratic red tape. This proposed legislation will speed that along, which, again, is a positive thing for everyone involved. It is important to note that no designations come into effect until the land has been transferred to the First Nation. This will ensure that any deals made during the designation process will be null and void if the reserve is not granted in the end.

The flexibility of Bill C-37 is also welcome. Clause 3 allows First Nations with specific claim settlements to choose whether to opt into the scheme proposed by this bill. For existing settlement agreements listed in the bill's schedule, this can be done through a resolution of the First Nation's council. However,

there is nothing that requires the First Nation to opt in. Affected Saskatchewan First Nations, for example, can choose to remain under the rules set out in the 1993 Saskatchewan Treaty Land Entitlement Act. I am hopeful, and I would expect, that most First Nations would choose to take full advantage of the bill that is now before us. I am hopeful, not only for the sake of First Nations in Alberta and Saskatchewan, but because the bill seems advantageous from all sides. Reducing bureaucracy in government is a good thing, and that is often not easily achieved.

The advantages for First Nations are clear. The ability to negotiate and accommodate third-party interests will mean quicker designation of interests on pre-reserve lands and the faster reaping of economic benefits from development on reserves. Third parties also clearly benefit from the certainty that their interests are protected before the transfer of land to reserve status. This is DIAND doing what it should be doing — easing the layers of bureaucracy that have been built up over the years that often impede real progress. Fewer layers of bureaucracy increase security and certainty for everyone involved.

I only have one caveat. The Manitoba Claims Settlement Implementation Act has been in effect for over one year. We have yet to see, according to DIAND officials, a single band opt into its scheme. This appears to be because DIAND has yet to implement an administrative process by which Manitoba First Nations with reserve expansion claims can take advantage of the scheme. I wonder what is the point of implementing legislation without soon thereafter putting in an administrative process for its use. I will be interested to hear the reasons for this delay from DIAND officials during our committee hearings.

• (1430)

In spite of this, the legislation now before us is, as was its Manitoba counterpart, good, although we may have to watch how it is implemented. I should like to add my support and that of my party to Bill C-37. Any piece of legislation that helps First Nations to avail themselves of what is rightfully theirs deserves our support. I look forward to hearing from witnesses in committee and supporting the speedy passage of this bill.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read a third time?

On motion of Senator Wiebe, bill referred to the Standing Senate Committee on Aboriginal Peoples.

ANTI-TERRORISM BILL

THIRD READING— MOTION IN AMENDMENT— POINT OF ORDER—SPEAKER'S RULING

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,

On the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

"Expiration

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4."

The Hon. the Speaker: Honourable senators, it occurs to me that we have some time before I must call in the senators at 2:45 p.m. by order. This would be an opportune time for me to dispose of the ruling that was requested of the Chair last Friday. Accordingly, I will rule on the Bill C-36 amendment now.

[Translation]

Honourable senators, last Friday, December 14, the Deputy Leader of the Opposition, Senator Kinsella, raised a point of order just before the adjournment of the Senate's sitting for that day. The point of order addressed several issues related to the Senate's consideration of the amendment of Senator Lynch-Staunton, seeking to insert a five-year sunset clause into Bill C-36, the anti-terrorism legislation of the government, which is now at third reading.

[English]

First of all, Senator Kinsella questioned the size of majority that would be required for the decision on the question of the amendment of Senator Lynch-Staunton. This is because, as the honourable senator observed, the amendment is virtually identical to that which had been recommended by the special committee that studied the subject matter of Bill C-36. Following

some debate, the Senate adopted that first report of the special committee on November 22, 2001.

In Senator Kinsella's view, the Senate is now confronted by two reports that are inconsistent with each other. In addition to the first report of the special committee already adopted, the Senate has before it the third reading motion on Bill C-36, which is, as Senator Kinsella described it, the second report of the special committee, which recommended no amendments to Bill C-36. Under our rules, this report was adopted automatically. In order to deal with the third reading of Bill C-36, Senator Kinsella contends that the decision on the first report of the special committee would have to be set aside; it would have to be rescinded. To do this properly under our rules, he argued, would require a vote of two-thirds of the senators present in the chamber.

To buttress his case further, Senator Kinsella spoke of the underlying principles of our parliamentary system and the balance accorded the rights of the majority and the rights of the minority. Senator Kinsella referred to resolutions of the British House of Commons dating back to 1604 and 1610. In addition, the senator took note of the fact that rule 63 dates back to 1915 and is, consequently, of long standing. Senator Kinsella also supported his contention by observing that Senate practices provide for different levels of support depending on the nature of the decision. Beyond simple majority and the two-thirds majority, there is also the unanimity requirement for certain requests such as one to change the recorded vote of a senator. Finally, Senator Kinsella cited references to parliamentary authorities and to a decision made by a previous speaker of the Senate in 1991.

For his part, the Deputy Leader of the Government, Senator Robichaud, disagreed with the case presented by Senator Kinsella. Senator Robichaud explained that the first report of the special committee dealt with the subject matter of Bill C-36. The objective of the subject matter review was to make known certain views of the Senate to the House of Commons while the bill was still in the other place. The work of the special committee was successful in that amendments adopted in the other place were based in part on some of its recommendations. Now, according to Senator Robichaud, the Senate is seized of Bill C-36 itself as amended by the other place. Following second reading, the bill was studied by the special committee, which subsequently presented its report.

In Senator Robichaud's view, if the position of Senator Kinsella were to be followed, it would render almost impossible any pre-study of a bill, since the Senate would be bound by the recommendations made by the committee. According to Senator Robichaud's analysis, the two exercises, the pre-study of a bill and the consideration of the bill itself, are separate procedures, and the Senate could not have intended to be constrained in its review of the bill by any approved pre-study.

In rebuttal, Senator Kinsella stated that the problem arises in this case because the Senate adopted the first report of the special committee and thus pronounced itself with respect to the recommendations contained in that report. Accordingly, the Senate cannot pronounce itself again, based on the same question rule, without rescinding its previous decision which requires a two-thirds vote under rule 63.

I wish to thank the deputy leaders for their views on this point of order. I reviewed the Debates of last Friday, the parliamentary authorities, and the history of Senate rules and practices. I have also searched for any precedents that might be useful to my understanding of this particular case. I am now ready to rule on this challenging point of order.

Let me begin by stating that I think that Senator Kinsella has raised an interesting issue. Rule 63(1) is quite clear. It states that:

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded....

Accordingly, the Senate should not consider the same matter a second time in the same session if it has already pronounced on it. This rule is used not only by the Senate but by many other parliamentary bodies as well, including the other place. As Senator Kinsella explained, the underlying principle dates back centuries to the British House of Commons.

That being said, however, I believe that the Senate has never treated pre-study as a procedure subject to the same question rule. Pre-study has been a feature of Senate practice for more than 30 years. It was a device developed originally by the late Senator Salter Hayden, the long time Chair of the the Standing Senate Committee on Banking, Trade and Commerce. Its purpose was to allow the Senate more time to examine bills, particularly complex and controversial bills, while accommodating the broad legislative timetable of the government. At the same time, it permitted senators greater input into the legislative process by allowing the work of the Senate to have some influence on the study of a bill while it was still in the other place. This is precisely what happened with regard to the study of this bill. Certain recommendations of the special committee were incorporated into the original version of Bill C-36 while it was still in the possession of the other place. Thus, the work of the special committee on the pre-study of the bill was not without effect.

Applying the logic of Senator Kinsella strictly to the circumstances now before us, it seems to me that the problem is far greater than the one he made out. If the same question rule is to be applied vigorously it affects more than just the amendment of Senator Lynch-Staunton and the third reading of Bill C-36. It affects the entire proceedings of the bill from the moment it was introduced in the Senate. The first report of the special committee, it could be argued, dealt with the subject matter of Bill C-36 and made numerous recommendations that were subsequently adopted by the Senate. Thus, the Senate has pronounced itself with respect to the entire contents of what is now Bill C-36. Under the terms of the same question rule, understood in this restrictive way, the Senate should not reconsider Bill C-36 at all. I do not believe, however, that this is the intent of the rule.

• (1440)

Senator Kinsella noted that the 1610 resolution of the British House of Commons enunciated a principle with respect to legislation "that no bill of the same substance be brought in the same session." This has also been a part of our practice since

Confederation. It is my view that this principle has not in fact been violated with respect to the consideration of Bill C-36. The pre-study of the bill was a preliminary stage of examination that was not intended to be definitive and that was also distinct from any subsequent proceedings related to the review of the bill itself. This is critical to the question at hand. According to Erskine May, twenty-second edition, at page 334, "a question which has not been definitely decided may be raised again." Any decision taken with respect to a pre-study phase of legislation cannot be the last word on the subject.

To take the contrary position would fly in the face of other practices followed with respect to the legislative process. When, for example, the Senate amounts a House of Commons bill and it is returned to the Senate with a message rejecting the amendment, the Senate is not precluded from either dropping its amendment or changing it, despite having already taken a decision on it.

I would concede that most reports dealing with pre-study have not been adopted by the Senate. This is because the vast majority of these pre-study reports have been tabled. With respect to Bill C-36, the first report of the special committee was tabled. However, it was subsequently adopted by a motion from the floor. Does this make a difference? In my view, for the reasons that I have already given, it may call into question the same question rule but it does not actually constitute a violation of it. There is a precedent to support my interpretation. It occurred in 1992 and involved a bill on telecommunications, Bill C-62. That bill had been the object of a pre-study, the report of which was subsequently adopted. As with Bill C-36, the pre-study report on Bill C-62 had an impact on the study of the bill in the House of Commons, even though not all of the pre-study recommendations were incorporated into it. When the bill was at third reading in the Senate, an amendment was proposed to include a missing portion of a recommendation that had only partially been accepted in the House of Commons. In the end, the amendment was negated.

The result, however, is not the principal point of this case. Rather, it is that the pre-study report, with its numerous recommendations and the third reading debate were implicitly recognized to be two separate, although related, proceedings. As one would expect, the pre-study report certainly informed the debate on the bill, but it did not limit the course of that debate nor did it determine its outcome. They were treated as two different and separate procedures.

It is my ruling that a case has not been made on the point of order. Rule 63 does not apply to Bill C-36 and there is no need to rescind any decision of the Senate.

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT NEGATIVED—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

On the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Andreychuk, that the Bill, as amended, be not now read a third time but that it be further amended in clause 110, on page 113, by replacing line 29 with the following:

“(2) When the youth justice court, on application of the Attorney General, determines that the public interest will best be served and that the rehabilitation of the young person will not be compromised, subsection (1) does not apply”.

The Hon. the Speaker: Honourable senators, pursuant to the order passed by the Senate on Friday, December 14, 2001, I will now ask for the bells to ring for a vote on an amendment to Bill C-7.

I have been advised by Senator Nolin, the mover of the amendment, that there is an error in the way in which the amendment has been written in the *Debates of the Senate* and the *Journals of the Senate*.

Senator Kinsella: The Journals are correct.

Senator Nolin: Only the Debates.

The Hon. the Speaker: The error is in the French version of the amendment of the *Debates of the Senate* in that certain words are missing. The amendment appears, however, in the *Journals of the Senate* correctly. If honourable senators would wish, I would be happy to read the French version of the amendment?

Senator Nolin: No.

The Hon. the Speaker: Senator Nolin says it is not necessary.

Honourable senators, it being 2:45 p.m., pursuant to order adopted by the Senate on December 14, 2001, I interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Nolin to Bill C-7.

The bells calling in the senators will sound for 15 minutes, so that the vote can take place at 3:00 p.m.

Call in the senators.

• (15:00)

Motion in amendment negatived on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	Lynch-Staunton
Atkins	Meighen
Beaudoin	Murray
Bolduc	Nolin
Comeau	Oliver
Doody	Prud'homme
Johnson	Rivest
Kelleher	Roche
Keon	Spivak
Kinsella	Stratton
LeBreton	Wilson—22

NAYS THE HONOURABLE SENATORS

Austin	Kirby
Banks	Kolber
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Moore
Corbin	Morin
Cordy	Phalen
Day	Pitfield
De Bané	Poulin
Fairbairn	Poy
Finestone	Robichaud
Finnerty	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Sparrow
Gill	Stollery
Graham	Taylor
Hubley	Watt
Jaffer	Wiebe—47
Kenny	

ABSTENTIONS THE HONOURABLE SENATORS

Nil

MOTION IN AMENDMENT

Hon. A. Raynell Andreychuk: Honourable senators, I move, seconded by the Honourable Senator Nolin:

That Bill C-7 be amended, in clause 2,

(a) on page 2, by adding, immediately before line 3, the following:

"2.(1) An object of this Act is for the law of Canada to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and

(b) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Senator Andreychuk: Honourable senators, I should like reiterate the message that I have been trying to drive home from the time we first began to debate Bill C-7. When we adopt any bill that concerns youth justice in Canada, we owe the international community and equally as important the children of our country, an unequivocal demonstration of Canada's commitment to the United Nations Convention on the Rights of the Child. Bill C-7, in its present form, does not deliver such a commitment. The bill does not go far enough to ensure that the provisions of the convention relating to youth justice are respected in Canada. It does not guarantee that a person will be able to obtain remedy in a court of law in the event a right contained in the convention is violated. The present bill acknowledges that we are a party to the Convention on the Rights of the Child but only recognizes rights and freedoms when referring to children's rights, including those contained in the Canadian Charter and the Canadian Bill of Rights, after the convention has been given cursory, non-binding treatment.

It is true that a preambular statement may indicate that a given piece of legislation has been adopted to fulfil specific treaty commitments, as the Supreme Court of Canada indicated in the 1997 decision *R. v. Hydro-Québec*.

• (1510)

However, the non-committal phrasing of Bill C-7's preamble vis-à-vis the Convention on the Rights of the Child sends a clear message to the courts of Canada that the letter of the law is not to be considered as binding within the laws of Canada. In fact, Minister McLellan, having had the question put to her directly — "Is this enabling legislation?" — continued to restate that it was in conformity. When asked again whether it was intended to be enabling legislation, she indicated that we were a party and that it was in conformity. She would not acknowledge that it was enabling legislation, and I think rightly so, as I do not believe that was intended in the bill.

Honourable senators, if we want to live up to our international commitments in the preamble, a more categorical language will have to be adopted than what presently exists. We will have to use language that expressly states that the bill recognizes the rights laid out in the convention as it pertains to the rights of youth caught up in the youth justice system. However, the adoption of such clear language is not the best option available. Canada maintains a dualist system in respect to the implementation of international treaties and international law. The executive branch of government enjoys exclusive Royal Prerogative to sign and ratify treaties. However, the act of ratification of itself does not have a direct effect upon the laws of

Canada. Legislation must be adopted in order to incorporate a treaty or any part of a treaty that the executive has ratified into national law.

Therefore, if we truly want to honour the commitments that we have made before the international community when we ratify the convention, we must adopt enabling legislation. In this way, we will transform our international commitments into binding national law. We have not adopted any such legislation for the Convention on the Rights of the Child.

A ratified and unimplemented international instrument may enjoy certain authority in Canadian law. However, the best we can hope for is that the courts consider the values reflected in the instrument in order to help inform the contextual approach that courts are to adopt when interpreting the applicable domestic law. This is precisely the route the Supreme Court of Canada took in *Baker v. Canada*. However, the precise rights circumscribed by any given international instrument such as the Convention on the Rights of the Child cannot be guaranteed simply by considering the values that are expressed in the instrument.

Certainly it is possible to bring forward legitimate arguments or expedient excuses that explain away why no enabling legislation needs to be adopted in order to implement the Convention on the Rights of the Child. However, we must reflect on the serious consequences that flow from breaking our word to the international community. We can claim that Canadians are not prepared to accept all the rights contained in the convention. We can insist on the fact that few other countries have ratified it. There is also the argument that the convention steps into the jurisdiction of provinces. The provinces, along with the federal government, however, agreed to the ratification of the convention. Therefore, legalistic arguments aside, the provinces cannot maintain that they are not bound by it.

The argument has also been made that the convention goes beyond the scope of the bill. However, a simple qualifier stating that the convention pertains exclusively to youth justice is all that is needed to narrow the scope of the convention to fit the youth justice bill. Also, if there are preoccupations that the convention, as it pertains to youth justice, treads into provincial jurisdiction, then the bill itself must be considered to be doing just that: going into provincial legislation.

One cannot have it both ways. Either the convention, as it pertains to youth justice and the bill, lies within the authority of the provinces or it does not. Criminal justice as it relates to youth is within the authority of the federal government and, therefore, the bill and the convention do not infringe on provincial jurisdiction or, alternatively, they do. In my opinion, if an interpretive section were added, we could live with the bill.

However, one cannot change the fact that Canada has ratified the convention and that we must live up to it. We have committed ourselves to the international community to comply with the convention. As a nation that prides itself on the important contributions it has made to the field of human rights, Canada does not want to see its reputation tarnished due to any real or perceived disregard it may demonstrate toward such rights. To do so would undermine our leadership role in the area of international human rights within the international community but, more important, it would deprive children of their rights.

The Vienna Convention on the Law of Treaties states in article 26:

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27 underlines that:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Honourable senators, despite assurances to the contrary —

The Hon. the Speaker: I regret to interrupt the Honourable Senator Andreychuk. It being 3:15, pursuant to the order adopted by the Senate on December 14, 2001, I interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Lynch-Staunton to Bill C-36.

Debate suspended.

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,

On the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

"Expiration

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4."

The Hon. the Speaker: Honourable senators, the bells to call in the senators will be sounded for 15 minutes and the vote will take place at 3:30 p.m.

Call in the senators.

• (1530)

Motion in amendment negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Andreychuk	Meighen
Atkins	Murray
Beaudoin	Nolin
Bolduc	Oliver
Comeau	Pitfield
Doody	Prud'homme
Johnson	Rivest
Kelleher	Roche
Keon	Spivak
Kinsella	Stratton
LeBreton	Tkachuk
Lynch-Staunton	Wilson—24

NAYS

THE HONOURABLE SENATORS

Austin	Kenny
Bacon	Kirby
Banks	Kolber
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Moore
Corbin	Morin
Cordy	Phalen
Day	Poulin
De Bané	Poy
Fairbairn	Robichaud
Finestone	Rompkey
Finnerty	Setlakwe
Fraser	Sibbeston
Furey	Sparrow
Gauthier	Stollery
Gill	Taylor
Grafstein	Tunney
Graham	Watt
Hubley	Wiebe—49
Jaffer	

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

On the motion in amendment of the Honourable Senator Andreychuk, seconded by the Honourable Senator Nolin, that Bill C-7 be amended, in clause 2,

(a) on page 2, by adding, immediately before line 3, the following:

“2.(1) An object of this Act is for Canadian law to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object.”; and

(b) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

The Hon. the Speaker: Honourable senators, Senator Andreychuk had the floor. I was advised by the clerk that Senator Andreychuk had 12 minutes. I am not sure how much of her time has expired, but I would not want her to run out of time before putting her motion.

There might be some issue as to whether Senator Andreychuk has 45 minutes. On that point, the first speaker from the other side, Senator Rivest, used 12 minutes.

Is it agreed, honourable senators, that Senator Andreychuk will have the 45 minutes?

Hon. Senators: Agreed.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if she does not need 45 minutes, we would appreciate it, but we will certainly give her the time to address her motion.

Hon. A. Raynell Andreychuk: Honourable senators, I want to thank Senator Robichaud. I think I made clear the importance of this topic. I have at least made that point with honourable senators.

Honourable senators, despite assurances to the contrary, there exist serious concerns that if we adopt Bill C-7 in its present form, we may well be adopting a bill that maintains provisions that run contrary to the Convention on the Rights of the Child

that cannot be justified before the international community. A variety of provisions in this bill run contrary to both the letter and the spirit of the convention. We have already discussed the issue of imprisoning young people with adults. The expression of our support of young Aboriginals was concretized when we adopted Senator Moore's amendment last Thursday, and this goes some distance toward giving benefit to the convention.

Also, let us not lose sight of the fact that the purpose of Bill C-7 is to provide a separate criminal justice system for young people. Clause 3(1)(b) of Bill C-7 states:

the criminal justice system for young persons must be separate from that of adults...

This principle is mirrored in article 40(3) of the convention, which stipulates:

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law...

However, Bill C-7 does maintain provisions whereby adult sentences are to be imposed on youth within the youth criminal justice system. Therefore, the bill is importing adult sentencing into youth court, thereby effectively placing young people in an adult court that has been given youth court window dressing. I have already spoken to fact that the bill, taken in its entirety, certainly looks like the adult system, with very few ameliorating facts for children.

• (1540)

We tried to make several amendments to ameliorate the effect of those offending provisions of the bill. The Standing Senate Committee on Legal and Constitutional Affairs adopted two amendments that would exclude 14-year-olds from receiving adult sentences.

The convention permits state parties to set their own age of majority. However, there are serious concerns that the convention is grossly undermined by provisions of the bill that give the provincial lieutenant governors the discretion to set the age limit for imposing adult sentences at either 16 or 14 years. If youth are to be given equal treatment in our youth justice system, all young offenders of the same age must be treated equally, as a starting point.

In some cases, youth court can be even more penalizing than adult court in Bill C-7, as in the “three strikes” provisions of the bill. The Legal and Constitutional Affairs Committee adopted an amendment that seeks to grant the Attorney General the discretion to decide whether the subsequent offence is serious enough to trigger the full and severe consequences that flow from a finding of guilt of a presumptive offence. Unfortunately, this chamber does not see it that way, given our last vote.

Without this amendment, the presumptive offence clauses of the bill clearly violate the provisions of the convention that stipulate that all alternatives must be considered before sending a young person to prison. When one presumes incarceration, the special safeguards and care owed to youth are given secondary treatment, and the rallying cry for punishment comes to the fore.

The clause of Bill C-7 dealing with conferences offends several articles of the convention. Article 12 of the convention requires that young people be provided with the opportunity to be heard in any judicial and administrative proceeding that affects them. Article 40 guarantees youth who are accused of breaking the law the right of due process of law. That includes the right to have legal assistance present when a judicial body is convened for the purposes of determining a youth's involvement in crime, or, for that matter, any administrative body trying to deal with children.

Clause 19 of the bill allows a limited number of people to convene a conference in which the accused is not present. The purpose of these conferences is to allow interested parties to give advice on issues such as sentencing, interim release and extra-judicial measures. Conferences are not simply toothless forums where interested parties gather to discuss the advantages of imposing such and such a penalty on a given youth. Conferences have the potential of representing a forum where the liberty of young people can be decided in their absence by partial parties, although with the best of interests, and subsequently made official by the courts of law. Imposing criminal penalties on young people on issues originally decided in absentia undermines fundamental canons of criminal law in Canada. Not only are the conventions violated, but due process of law, in general, is thrown out.

The committee adopted an amendment whereby the Crown must prove it is in the public interest that a young offender's name be published before any such publication takes place. In this way, the committee sought to strike a balance between the relatively unimpeded right to publicize a young person's name, and the special protection that must be accorded to the young person in the spirit of the convention. If the bill is adopted without the committee's amendment on this matter, the young person's needs for special safeguards and care, as outlined in the convention, will be smothered by public interest.

Bill C-7 does not foresee a strong role for teachers of young offenders in the rehabilitative process. However, it is in such situations that teachers must be given access to the records of young offender students. I have already spoken on this point, and I will not take the time to speak in detail about teachers. However, teachers, I must state over and over again, should not be seen as the public. Teachers must be seen as the convention sees them, as a resource for children in rehabilitation. They are also seen, as in article 3, as other individuals legally responsible for the child. Surely teachers stand in *locus parentalis* for more hours with children, and their right to know, under the three conditions put into the amendment, needs to be reinforced. What

signal are we sending to our teachers when we say they do not have a role in rehabilitation? It is time that we recognize the convention and that we recognize teachers.

At this moment, honourable senators, I want to correct the record with respect to the stance of the Canadian Teachers' Federation on corporal punishment. Taken from the Canadian Teachers' Federation Web site, and confirming the same with officers at the federation, their policy statement 5.4.1 states: "The Canadian Teachers' Federation opposes the use of corporal punishment." This policy statement was made in 1989 and reaffirmed again in 1991. The Canadian Teachers' Federation endorses the development of effective disciplinary skills that would eliminate the use of corporal punishment. I shall not take the time today, but I think it is worthy to hear what teachers have to say about clause 43.

Honourable senators, on a final note on the convention per se, the reasons explaining why the convention needs to be binding are not exclusively based on considerations pertaining to Canada's commitment to and reputation before the international community. The convention will give direction to the application of the bill within Canada. The guiding principle of the convention is to provide rights to children in order to secure the special care and safeguards they are owed. However, in its present form, Bill C-7 is convoluted, contradictory, legalistic and resource dependent. The bill does not send any clear message to the youth of Canada. It is not the clear message of stick or carrot. It is a convoluted message of subsections, cross-references and legal minutiae. Its overall signal to youth is not one where young people will be taught to be accountable for their acts nor where they will learn that society is there to encourage and support them in the challenge to turn their backs on crime.

On the other hand, the convention's message is that we have the obligation to secure special care and safeguards for our nation's most precious resource. By committing ourselves to something greater than simply the spirit of the convention, we will at least be able to place the bulky and awkward vehicle of Bill C-7 on the rails of a youth justice system that has as its core value the safeguard and care of young people. Only from this point, may we commence the journey that leads to the veritable rehabilitation and integration of young offenders into society.

Honourable senators, the minister spoke about a policy for young people and indicated that she had relative support, but the fundamental support that the minister needs comes from the ministers of justice and the ministers of community services in the province. Quebec is in the courts. The Minister of Justice in Ontario is not satisfied with the bill and, indeed, wants more than 100 amendments. Another minister talked about rehabilitation and worried about the shortage of funds to do proper rehabilitation. The Minister of Justice of Saskatchewan and the Minister of Justice of Manitoba worried about Aboriginal youth being overrepresented in the system and a matter requiring our attention.

If this is to be the guiding act, it certainly is not accepted by those in the provinces from whom it needs full support. In fact, as Kim Pate of the Elizabeth Fry Society said, when the Young Offenders Act came in, it was hailed as internationally innovative and new, but when the negotiations started with the provinces to release resources, it fell quickly into disrepute.

I am afraid Bill C-7 will fall into the same disrepute with the many witnesses who appeared before us and those who sent us letters, e-mails and so forth. This bill just does not do it for young people. It will put resources into the hands of a system, not into the hands of measures that help young people.

• (1550)

We heard from Mr. Irwin J. Waller, Professor of Criminology at the University of Ottawa, who spent seven years running the International Centre for the Prevention of Crime, in Montreal, where they identified methods to reduce crime and how to implement those methods. He stated to the committee:

I read what the minister said to this committee and I agree with her ambitions for Canadian policy.

I think it is good to reduce youth crime, to respect the needs of victims and to limit custody, not to the last resort but to where it is an appropriate sanction to use. Safety is as important to Canadians as health care and education, and we need to treat it in the same way, and that is seriously. Unfortunately, the proposed legislation, in its present form, without adequate strategy around it, and there is no visible strategy around it, will not have any impact on decreasing crime. It will not decrease crime, neither persistent crime, petty crime nor violent crime, and that is an important point to underline, and I will be happy to be taken to task on it. The proposed legislation will not reduce the number of persons in custody. In fact, from what I have heard today, it is likely to increase fairly significantly the number of people in custody.

Third, if implemented, the proposed legislation will squander scarce human resources and financial resources in Canada on the wrong things. These resources obviously should be put into reducing youth crime, not criminalizing crime in the way it is dealt with here.

Fourth...I do not think the proposed act in its present form will conform to every part of the UN Convention on the Rights of the Child, primarily because of the presumptive sanctions and the issues that have been referred to in terms of legal assistance and in terms of putting in the legislation, for instance, use of Dangerous Offenders Act for kids aged 14. I am not comparing this with the Young Offenders Act. I am comparing it with what a civilized society should be doing, and that is what the measure is in the UN Convention on the Rights of the Child.

He went on to say:

It is, in my view, futile to have a debate about whether the Quebec system is better than the Ontario or British system

when we do not even have adequate information on how these systems operate within our country. We must get adequate statistics in place.

He went on further:

We need to begin to change the culture in policing, in our schools and in the justice system, so that crime reduction is our focus. I am in favour of the rights of offenders and victims. We have to make sure that crime reduction is the major objective. That is what people want but are not getting in this country at the moment.

Later, in response, Professor Doob made an interesting statement. He said:

I thought we were here to talk about the proposed youth criminal justice act. I agree completely with Professor Waller that crime prevention is important, but the important point is that the kinds of things that will be involved in crime prevention are outside of this proposed act. Whether we have the Youth Criminal Justice Act, the Young Offenders Act, the Juvenile Delinquents Act, or deal with everyone under the Criminal Code, talk about how we treat children and how we see children, but it does not have a lot to do with how we will reduce crime.

Honourable senators, we need to rethink this entire process. We have been given a golden opportunity by the amendment. The bill is now amended. I plead with senators to give consideration to the United Nations Convention on the Rights of the Child, something for which I must give credit to Senator Pearson. I note that she is not here today, although I do not wish to comment on that. However, I know she is committed to the convention.

In committee, Senator Pearson was preoccupied with the fact that any amendments would require the bill to be returned to the House of Commons. Honourable senators, this is now an amended bill. I ask you, therefore, to consider this amendment with the other amendment.

I move:

That Bill C-7 be amended, in clause 2,

(a) on page 2, by adding, immediately before line 3, the following:

"2.(1) An object of this Act is for the law of Canada to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and

(b) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

The Hon. the Speaker: It is your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Hon. Bill Rompkey: I propose a 10-minute bell.

Hon. Terry Stratton: I propose a one-hour bell, with the vote to be held tomorrow at 5:30 p.m.

The Hon. the Speaker: The opposition whip has requested a deferral of the vote, which he is entitled to do on a government bill pursuant to our rules. Accordingly, the vote will be at 5:30 p.m. tomorrow afternoon. There will be a 15-minute bell pursuant to the rules.

Senator Rompkey: If we cannot agree on a 10-minute bell now, could we agree to attach this vote to a vote later this day?

Senator Stratton: No.

Senator Rompkey: We have a scheduled vote at 4:30 and one at 5:30 p.m.

Senator Stratton: Rule 67(2) states:

Except as provided in section (3) or as otherwise provided in these rules, when a vote has been deferred, pursuant to section (1), it shall stand deferred until 5:30 o'clock p.m. on the next day the Senate sits.

Rule 66(1) calls for a one-hour bell.

Senator Rompkey: I seek clarification from the opposition as to exactly what their preference is. Is there a possibility that they will agree to have a one-hour bell this day?

Senator Stratton: As I stated last week, we have a deferred vote. It will be called the next sitting day at 5:30 p.m., with a one-hour bell. Those are the rules.

The Hon. the Speaker: The only issue I should try to resolve now is the length of the bell. Senator Stratton believes the bells should ring for one hour. I have indicated that it should be 15 minutes. That is to say that the bells should ring for 15 minutes prior to the vote at 5:30 p.m. tomorrow. The reason for the 15-minute bell is that the rules provide for an interruption of proceedings. I will read the relevant rule, which states:

66(3) When, under the provisions of any rule or order of the Senate, the Speaker is required to interrupt the proceedings for the purpose of putting forthwith the question of any business then before the Senate or when a standing vote has been deferred pursuant to rule 68, the Speaker shall interrupt the said proceedings not later than fifteen minutes prior to the time provided for the taking of the vote and order the bells to call in the Senators to be sounded for not more than 15 minutes immediately thereafter. These provisions shall apply, in particular, to the disposition of non-debatable motions and any motion for which a period of time has been allocated to the disposition of the debate.

• (1600)

Accordingly, the bells will ring at 5:15 p.m. for a vote at 5:30 p.m. that has been deferred by the opposition whip to that time.

Senator Robichaud: Honourable senators, we have been negotiating and we had been speaking about Bill C-7. I thought we had come to an understanding that those senators who wanted to speak and move amendments would do so today. We would vote on those amendments today and, if there were one or two amendments, senators would then be free to express themselves. However, that vote was to be taken today so that we could dispose of Bill C-7.

I am at a loss as to why we are not proceeding in this manner. I would ask my honourable colleague, the Deputy Leader of the Opposition, if this is not the way that we should be moving?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, unfortunately, I was out of the room when we got to this immediate point. Let me see if I can recapitulate where we are at the present time.

Senator Andreychuk has concluded her address on third reading of Bill C-7 and has moved an amendment. I take it that the question is being asked regarding that particular amendment. The question is whether or not that vote would be deferred. The two whips have not reached an agreement as to when that vote would be deferred. The rules are clear that it would be tomorrow at 5:30 p.m. unless, in the meantime or over the next period of time, an agreement was reached so that they could revisit this time and have unanimous consent on it. I take it that if the vote is deferred, then the debate on this item is also deferred. I would want to do a bit more reflection on where we are on this matter.

[Translation]

Senator Robichaud: Honourable senators, I understand that when a vote is called for, the opposition whip may delay it until the following day. However, we had an agreement, and, now, I see that we no longer do. I guess people can always change their minds — I have no control over that — but I do wish that people would honour our agreement, that is, to vote now on the amendment, hear the senator wishing to propose an amendment, vote for third reading of the bill and continue our work on the Orders of the Day.

Hon. Marcel Prud'homme: The spirit of cooperation that can exist between two people does not seem particularly common in this chamber. I understand that, in the House of Commons, an eye was very often kept on who was coming in and who was going out in an effort to establish unanimous consent, which never happened. In my opinion, we should proceed with the *Rules of the Senate*, and the items on the Orders of the Day should be treated as usual. We are back here on a Monday. Those who want to leave tonight can leave. Otherwise we would have reached different agreements on Friday.

[English]

We would not have placed the burden on all of you to come back here today at the expense of taxpayers, which is what some people will accuse us of doing. We are here to do our duty. You have called us back. It is Monday. Let the universe unfold and we will see what happens.

The Hon. the Speaker: Honourable senators, the situation is straightforward. We have a deferred vote, which prevents further debate on Bill C-7 because we have called the vote. There is no agreement to do otherwise that I can discern. Accordingly, I ask the table to call the next item.

Honourable senators, in that we ordered a vote on Bill C-6 at the last sitting, I shall rise at 4:15 p.m. to indicate that the bells are to ring for a vote at 4:30 p.m.

• (1610)

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

MOTION IN AMENDMENT

Hon. Lowell Murray: Honourable senators, I have an amendment to propose to Bill C-36 after which I intend to speak to it. I move, seconded by Senator Buchanan:

That Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(a) by adding after line 19 the following:

“Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of

Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(b) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the motion in amendment?

Senator Murray: Honourable senators, this is the amendment for a watchdog, for a parliamentary commissioner. It has my name on it but I think of it — and I invite all senators to think of it — as the Grafstein amendment. It was he who, when the committee was engaged in pre-study and considering what manner of watchdog to set over the exercise of the extraordinary powers in this bill, suggested the appointment of a parliamentary commissioner.

We looked at the possibility of employing the Security Intelligence Review Committee, SIRC, which already oversees the activities of the Canadian Security Intelligence Service, CSIS. However, we soon came to the conclusion it would be necessary to bring in further legislation to enlarge the mandate of SIRC.

We also considered a parliamentary committee for the oversight function. On that point, we quickly came to the conclusion that such a mechanism would be unwieldy for the watchdog function. There was some talk of the creation of a judicial post, but as Senator Grafstein wisely reminded us, many of the issues that are apt to arise and come to the attention of an overseer would be political in the broad sense and not just strictly legal. Therefore, we came up with this parliamentary commissioner, and it is incorporated in the report of the special committee that conducted pre-study of the bill.

The commissioner we have in mind would be a real watchdog, a monitor, able to look over the shoulder of the authorities and blow the whistle on abuses when they happen, not three years afterwards.

Senator LaPierre very eloquently called on the Senate the other day to act as ombudsman for Bill C-36. I trust he might support this amendment. How could he not do so since it gives effect to his very own suggestion?

On Thursday night, when Senator Fraser was speaking, she feared that the passage of this amendment and the creation of a parliamentary commissioner would lead to some turf squabbling between the proposed parliamentary commissioner and existing oversight agencies. Well, the Access to Information Commissioner and the Privacy Commissioner act within the strict confines of their own statutes. They operate in relatively narrow fields, narrow relative to the wide scope of this bill. In any case, I have specifically exempted them in this amendment from the purview of the proposed parliamentary commissioner.

There is also a provision in Bill C-36 for the appointment of a commissioner — one exists already, actually — for the Communications Security Establishment. I think the purpose of that provision is to give that commissioner rather broader oversight powers than he now has. That commissioner would be a supernumerary judge or a retired judge of the superior court.

The Hon. the Speaker: I must interrupt Senator Murray, it being 4:15 p.m. Pursuant to the order of the Senate adopted on December 14, 2001, I interrupt the proceeding for the purpose of putting the question on the motion in amendment of the Honourable Senator Carney to Bill C-6.

Debate suspended.

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, to amend the International Boundary Waters Treaty Act.

On the motion in amendment of the Honourable Senator Carney, P.C., seconded by the Honourable Senator Di Nino, that the Bill be not now read a third time but that it be amended, in clause 1,

(a) on page 1,

(i) by adding after line 14 the following:

“removal of boundary waters in bulk” means the removal of water from boundary waters and taking it outside the water basin in which the boundary waters are located

(a) by means of any natural or artificial diversion, such as a pipeline, canal, tunnel, aqueduct or channel; or

(b) by any other means by which more than 50,000 L of boundary waters are taken outside the water basin per day.”; and

(ii) by replacing lines 24 and 25 with the following:

“sanitary purposes.”;

(b) on page 2,

(i) by replacing line 1 with the following:

“12. Except in accordance with a licence,”

(ii) by deleting lines 11 and 12,

(iii) by replacing lines 14 to 17 with the following:

“use or divert boundary waters by the removal of boundary waters in bulk.”,

(iv) by replacing lines 18 to 26 with the following:

“(2) For the purpose of subsection (1) and the application of the treaty, the removal of boundary waters in bulk is deemed, given the cumulative effect of removals of boundary waters outside their water basins, to affect the natural level or flow of the boundary waters on the other side of the international boundary and to have a negative environmental impact.”,

(v) by replacing lines 27 and 28 with the following:

“(3) Subsection (1) applies only in respect of the portion of the following water basins that is located in Canada:

(a) Great Lakes — St. Lawrence Basin, being composed of the area of land that drains into the Great Lakes or the St. Lawrence River;

(b) Hudson Bay Basin, being composed of the area of land that drains into Hudson Bay; and

(c) St. John — St. Croix Basin, being composed of the area of land that drains into the St. John River or the St. Croix River.”; and

(vi) by replacing lines 29 and 30 with the following:

“(4) Subsection (1) does not apply to boundary waters used

(a) as ballast in a vehicle, vessel or aircraft, for the operation of the vehicle, vessel or aircraft, or for people, animals or products on the vehicle, vessel or aircraft; or

(b) for firefighting or humanitarian purposes in short-term situations in a non-commercial project.”;

(c) on page 4,

(i) by deleting lines 13 to 22, and

(ii) by renumbering paragraphs 21(1)(e) to (m) as paragraphs 21(1)(a) to (i), and any cross-references thereto accordingly.

The Hon. the Speaker: The bells to call in the senators will be sounded for 15 minutes and the vote will take place at 4:30 p.m.

Call in the senators.

• (1630)

Motion in amendment negated on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Doody	Oliver
Forrestall	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk —22

NAYS
THE HONOURABLE SENATORS

Austin	Joyal
Bacon	Kenny
Banks	Kirby
Bryden	Kolber
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Maheu
Cook	Mahovlich
Cools	Milne
Corbin	Moore
Cordy	Morin
Day	Phalen
De Bané	Pitfield
Fairbairn	Poulin
Finestone	Poy
Finnerty	Robichaud
Fraser	Rompkey
Furey	Settlakwe
Gauthier	Sparrow
Gill	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wiebe
Jaffer	Wilson —52

ABSTENTIONS
THE HONOURABLE SENATORS

Prud'homme
Roche —2

• (1640)

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

On the motion in amendment of the Honourable Senator Murray, seconded by the Honourable Senator Buchanan.

That Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(a) by adding after line 19 the following:

“Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(b) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

The Hon. the Speaker: Honourable senators, Senator Murray has the floor and has seven minutes remaining.

Hon. Lowell Murray: Honourable senators, that being the case, I shall press on because I certainly do not want to endure the humiliation of asking for the extension of time and having it refused.

Why do we need a watchdog? There was an interesting exchange the other day, Friday morning during Question Period, between Senator LeBreton and Senator Carstairs about the execution of a search warrant on the residence of a former President of the Business Development Bank and an obvious tipoff that occurred to a newspaper. Senator Carstairs accused Senator LeBreton of impugning the integrity of the RCMP. With all due respect, I believe Senator Carstairs would do better to save her indignation for those in authority who leak unauthorized information to the media.

Some honourable senators can recall an incident in the 1970s when a Liberal senator arrived at his office to be confronted by the police with a search warrant in hand. Miraculously, the media had gotten wind of not only the issuance of the warrant but of the exact time of its execution. The senator, a former minister, was faced not only with the police and their warrant but with cameras, microphones and questions from the assembled media mob.

More recently, we had the spectacle of the then Premier of British Columbia observing the police, warrant in hand, together with — what a coincidence — the Vancouver media mob descending on his home one evening.

Senator Carstairs surely does not believe that these things happen because of the diligence of journalists: They happen because there are deliberate tipoffs to the media.

The purpose of these tactics can only be to make the laying of charges inevitable, or to at least make it difficult not to lay a charge because public opinion has been engaged. The purpose can only be to try and to convict an individual through the media, and I say that those tactics are inimical to due process and to the proper administration of justice and to impartial justice.

Honourable senators, this is the kind of thing that we need a watchdog to oversee. Members of my party have bad memories of what happens when due process and legal process is subverted for partisan political ends.

The other night, Senator Tkachuk mentioned the so-called Mulroney file. The public record shows what happened there. A rumour-mongering journalist filled the ear of the then Minister of Justice, Mr. Rock, with defamatory scuttlebutt about the former Prime Minister. Mr. Rock took the story to the then Solicitor General, Mr. Gray, who got the police to go galloping off in all directions. Before we knew it, there were accusations of corruption against Mr. Mulroney, couched in the most lurid language possible, winging their way to the authorities in Switzerland. There were accusations in respect of which, as the government had later to admit, there was no evidence. Meanwhile, liberal political staffers, who in a decently run operation should have no access to such files, were selectively trying to leak tidbits of the so-called Mulroney story to selected journalists on Parliament Hill.

Honourable senators, it is extraordinary that no one was ever called to account: No minister of the Crown, no official, no

political staffer and no policeman ever had to pay. Malfeasance and malevolence can operate in today's Ottawa without the perpetrators having to face any consequences whatsoever.

The relevance of this to Bill C-36 is obvious. If they can do that to a former Prime Minister, who had the resources and access to professional counsel and the determination to fight back successfully, what fate might await an ordinary citizen who incurs their wrath or even their suspicion with the new powers that are to be exercised under Bill C-36? That is more than a fair question: It is a pertinent question.

In Bill C-36, we have provision for a so-called entities list, formerly known as a terrorists' list. How much rumour will go into the compilation of the list, which goes to the Solicitor General and then right into the *Canada Gazette*, after being rubber-stamped by the cabinet? How much rumour, hearsay, suspicion, incompetence, simple human error and mistaken identity will go into the compilation of that list?

Once a name is on the list, an individual has the right to appeal to have it removed. However, honourable senators know full well that once a name appears on the list, that individual's reputation is a goner. Why is a watchdog necessary over the extraordinary powers in Bill C-36? That is why a watchdog is necessary.

No senator, to my knowledge, has ever advocated, in ordinary times, that these kinds of powers be accorded to the Crown, to the government or to its agents. Indeed, the Senate usually tilts in the other direction on legal matters. The Senate usually tilts in favour of the rights of the individual. Under the circumstances, however, we are asked by the government to grant these extraordinary powers, and we have to give the government the benefit of the doubt — that the powers are needed.

Honourable senators, we have the upper hand until this bill is passed. Let us pass the bill and let us grant the powers, but let us insist that there be proper oversight. We can reassure Canadians — those whose concerns we share — that Parliament will be watching; that Parliament will be vigilant; that there will be an officer of Parliament ready to blow the whistle on any abuse; that the officer of Parliament will report to us; and that the officer of Parliament will act in our name and in the name of the Canadian people and their rights.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Will Senator Murray take a question?

Senator Murray: Certainly.

Hon. Wilbert J. Keon: Honourable senators, I heard on the news today that the FBI will be increasing its activities in Canada. As I listened to the honourable senator, I wondered what the relationship of its activities would be with a parliamentary commissioner? In the absence of a parliamentary commissioner, who would be responsible for the activities of the FBI?

Senator Murray: Honourable senators, I heard the same report that indicated the FBI was seeking additional resources so that it could post more officers in Canada. I would assume that the FBI would work closely with the police and security services in this country. I assume that the activities of the FBI would be an open book to our police and security agencies and to the political ministers who are responsible for them.

It seems to me that if this additional close cooperation is to intensify, then it argues more strongly for the appointment of effective oversight and a parliamentary commissioner.

• (1650)

The Hon. the Speaker: Honourable senators, I regret to notify you that Senator Murray's time is up.

Senator Bolduc: I want to ask a question.

The Hon. the Speaker: The 15-minute time limit for speech, questions and comments has expired.

Senator Bolduc: That is too bad because it is a fantastic question.

The Hon. the Speaker: You could speak.

Senator Bolduc: Forget it.

The Hon. the Speaker: Honourable senators, are we ready for the question? Does someone want to speak?

[Translation]

Hon. Roch Bolduc: Honourable senators, I should like to say a few words about the activities of the FBI. Am I to understand that these activities are restricted to the borders? The FBI's jurisdiction is over the United States, not other countries. I believe it is the CIA that has jurisdiction elsewhere. The FBI is at the borders but I would be very surprised if its jurisdiction went beyond the borders. If we got into that, it would be a very serious matter. It would mean that we too would probably have people carrying out investigations in the U.S. and would mean there would be a total of three or four police forces per country. We already have the provincial police forces. It strikes me as odd. Perhaps some of the senators are more familiar with security matters. Would Senator Kelleher or someone else with experience in this area perhaps be in a position to respond to this?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe Senator Bolduc wanted to ask a question of the previous speaker. One cannot ask a question just like that, of someone on the other side. A comment, however, can be accepted.

Senator Bolduc: It was a comment.

[English]

The Hon. the Speaker: Is the house ready for the question?

Hon. John G. Bryden: Honourable senators, may I ask a question of the previous speaker? If the honourable senator was not asking a question, he was making a speech. If he made a speech, I have a right to ask a question.

The Hon. the Speaker: Senator Bolduc took the floor to speak. I saw him; he spoke. Will you take a question from Senator Bryden, Senator Bolduc?

Senator Bolduc: Yes.

Senator Bryden: Honourable senators, I am not quite sure that I understand. Was Senator Bolduc referring to the reports about the FBI expanding its area of operation?

Senator Bolduc: I was a bit surprised, but that was my concern.

Senator Bryden: Do you know on what authority they operate now in Canada?

[Translation]

Senator Bolduc: No, that is why I was concerned. I really do not know. I have always thought they had jurisdiction within the United States, but not elsewhere except at the borders. It is understandable that there is a cooperative effort at the borders between the RCMP, customs officials of both countries, and the FBI. Elsewhere, I have always thought it was the job of the CIA.

Hon. Laurier L. LaPierre: Honourable senators, the U.S. embassy has FBI representatives among its staff and these will become —

[English]

— legal advisers to the ambassador in order to assist the exchange of information, which they do anyhow in all the embassies of the world. It does not mean that they will come here to investigate, because they do not have that right. As usual, Senator Bolduc is quite right.

While I am on my feet, may I ask a question of the honourable Senator Murray?

The Hon. the Speaker: Honourable senators, I rise to seek your disposition. Is it the Senate's disposition to speak, to adjourn the debate or put the question?

Senator Bryden: Honourable senators, I should like to speak briefly on the amendments that have been canvassed by the honourable senators on the other side in relation to Bill C-36. In particular, I want to speak to the amendments that relate to the sunset clause and the possibility of having an officer of Parliament oversee the exercise of powers provided by Bill C-36.

There was no sunset clause in the original bill tabled in the other place. The sunset clause that is in the present bill was added largely, as I understand it, in response to the pre-study report of our special committee. The committee originally recommended a full sunset clause, meaning that the entire bill, except for those provisions dealing with international obligations, would come to an end at a particular time. This proposal was not accepted.

Senator Murray: Point of order. I am sorry to interrupt the honourable senator. I suppose that tradition might have it that a speaker can use his 15 minutes in any way he sees fit, but the honourable senator is purporting to debate an amendment that has already been defeated.

We had the vote on the sunset clause and defeated it a few moments ago. I eagerly await his comments on the amendment that is before us, which is the amendment pertaining to the Privacy Commissioner.

The Hon. the Speaker: We have a rule regarding relevance and it is generally along the lines to which Senator Murray is alluding. However, it has always been liberally interpreted. In particular, we have often seen debate on the main motion when we are actually on an amendment.

It is in the hands of the Senate. I am reluctant to intervene other than to point out that you have correctly drawn attention to the fact that we are on the current amendment, which has to do with the Privacy Commissioner.

It has also been requested of me to advise where we are in terms of proceedings on Bill C-36. We are debating an amendment. In this case, we could entertain a subamendment. That is, we could entertain an amendment to the amendment, but no more than that under our rules unless leave is given, as is sometimes done, to stack amendments. However, that leave has not been given.

Senator Beaudoin, the only amendment that could be entertained now is an amendment to Senator Murray's amendment.

Senator Bryden: I appreciate the instructions from my honourable friend opposite. As always, I defer to his long experience in this place.

Honourable senators, I was attempting to create a context within which to put my discussion on the officer of Parliament, which I believe is within the ambit of the speech of Senator Murray. The amendment that has been proposed in this area was canvassed very thoroughly during the course of our committee hearings. Indeed, it was proposed at committee by people on the other side and was not carried.

One of the main objections to this proposal relates to the jurisdiction to be exercised by this proposed officer. While criminal law is a federal jurisdiction, the administration of criminal justice, as Senator Beaudoin reminded us in committee,

is provincial jurisdiction. This has worked very well for many years.

Criminal law is not the issue of concern here. That is what we have been debating. That is what Bill C-36, if and when adopted, will be. It will be part of the criminal law of Canada that we would be reviewing within three years in any event.

• (1700)

The issue is the administration of this law, and that administration is largely a provincial matter. During the hearings last week, Senator Fraser asked Professor Errol Mendes, who is from the Faculty of Law at the University of Ottawa, whether a parliamentary officer could possibly oversee the activities of the provinces in executing the powers given to them under the bill. He asked whether the provinces would agree to the establishment of a free-ranging parliamentary officer who would come marching into their jurisdiction with a mandate to pass judgment on how they are doing. Professor Mendes replied:

Senator, you are right...It is a very complex constitutional problem because there are clear divisions of powers between what the provinces and the federal government have jurisdiction over.

Further to this issue, Mr. Rick Mosley of the Department of Justice was very explicit, saying:

The powers in Bill C-36 given to the police and the attorneys general will be exercised at both levels of government. Under our system, we believe it would be inappropriate for an officer of Parliament to conduct a review of the exercise of the jurisdiction of a provincial attorney general or minister responsible for the police, or the police or the Crown counsel who report to them. In a nutshell, that is one of the major objections to that proposal.

Professor Monahan, the constitutional law professor from Osgoode Hall, who is very well known and highly respected by my friends on the other side for actions and good service done in the past, said:

First, the administration of justice is a provincial jurisdiction. Most of the police forces are under the control of the attorneys general or solicitors general of the provinces. Therefore, I am not certain how the officer of Parliament would effectively review those bodies. It may be that it could be worked out through agreement.

Senator Forrestall: If you had bothered to think it through, you would have found out the act required it 30 years ago.

Senator Bryden: I am not sure that I understand your point.

Senator Forrestall: I am sure you do not. You do not want to, either.

The Hon. the Speaker: I ask for order. Senator Bryden has the floor and honourable senators wish to hear him speak.

Some Hon. Senators: Hear, hear!

Senator Bryden: I understand I have only 15 minutes and I am doing my very best, honourable senators.

I will continue the quote from Professor Monahan:

Second, there already exist review mechanisms for federal police forces. The RCMP and CSIS already have mechanisms to review their activities. Again, they will be the primary persons enforcing the law.

The other question is how would this new officer of Parliament work in conjunction with these other mechanisms that we have? An alternative might be to see whether the mechanisms that already exist could be used. I do not know whether the Canadian Human Rights Commissioner really has the expertise to deal with this. Perhaps the intelligence review committee or other bodies that already exist could, within their mandate, review some of these matters. I like to be practical about things and not set up a new commission or body every time we pass a new statute, but rather try to see what we already have.

I do think that it is important that there be effective oversight.

Like Professor Monahan, I do not like the idea of creating a new body or commission with every new statute. Like him, I like to work with what we have, and in this area we have extensive oversight and review mechanisms already in place. Minister McLellan and other witnesses pointed out that various accountability mechanisms already established under Canadian law will apply to the exercise of powers under this bill, including the commission for public complaints against the RCMP, the various complaint and review mechanisms that apply in respect of the police forces under provincial jurisdiction, the Privacy Commissioner, SIRC with respect to CSIS, the commissioner with respect to CSE, the Commissioner for Human Rights and of course our judiciary. Our deep concern would be how these bodies would interact with this new officer of Parliament, who presumably would have jurisdiction that overlaps significantly with several, if not all, of these existing bodies.

Senator Murray suggested at the committee that he should like to construct a mandate that would fill in those gaps. I question how useful or feasible that would be. Let me quote from the testimony of Mr. Radwanski, the Privacy Commissioner, before the committee. While he was not asked about this issue, he volunteered the following:

With your indulgence, senator, there is one other matter I wanted to raise with this committee because I have not been asked it so far. I wish to ensure that I do not fail to address it...

With regard to the matters that are under the jurisdiction of the Privacy Commissioner, I must tell you that I would be

as vehemently opposed to that as I was to these amendments that I had to take issue with. The reason is that there is oversight of privacy matters by an officer of Parliament. It is by an officer of Parliament who has a long-established office with an expert staff, including the best privacy expert lawyers, trained investigators, some of whom have been at this for 20 years, and policy analysts who have been at this for 20 years. To give a part of that oversight to a new officer of Parliament, with presumably other duties as well, would create either a fragmentation of oversight roles, which would weaken oversight; or it would create a hierarchy of officers of Parliament, which in my view would be untenable.

The Hon. the Speaker: I regret to advise Honourable Senator Bryden that his 15 minutes, plus some additional time that I have allocated because of the point of order, have expired.

Senator Bryden: May I have more time?

The Hon. the Speaker: Is leave granted, honourable senators, for Senator Bryden to continue?

Some Hon. Senators: Agreed.

Senator Forrestall: I did not give my consent to that. I am sorry if I was not heard. The word was "no."

The Hon. the Speaker: There is no unanimous consent, Senator Bryden, and accordingly your time has expired.

Hon. Tommy Banks: May I yield to Senator Bryden?

The Hon. the Speaker: No, the rules are fairly straightforward. Where there is a time limit and the time limit expires, that is it. We can continue debate, adjourn the debate or put the motion.

• (1710)

Hon. George J. Furey: It is always a privilege to rise in this chamber to address honourable senators. Today, I wish to speak to the very troublesome and controversial legislation known as Bill C-36.

I understand and appreciate some of the reservations of senators opposite. I have received numerous phone calls and much correspondence from individuals across the country asserting their concerns regarding the threat that they believe Bill C-36 poses to the civil liberties we currently know and enjoy. Indeed, my own daughter, Meghan, who is a second-year law student at Dalhousie University, and some of her fellow classmates have expressed to me some of their apprehensions about this bill. Therefore, it is not without grave concern and deep reflection that I rise to speak to honourable senators today and urge you all to support this legislation in its current form without amendment.

Honourable senators, I must first acknowledge that no legislation is perfect. If it were, legislators would be perfect and, therefore, those they represent would be perfect and hence there would be no need for Parliament. I am satisfied that in our great Canadian legal system, legislative imperfections can and will be addressed on a timely and ongoing basis by our competent judiciary.

Honourable senators, we have had an opportunity to look at the legislation in detail, and we have heard many words spoken for and against its various provisions. That is as it should be in a free and democratic society. We should jealously guard our freedoms, and we should be openly skeptical of governments that profess to protect them by infringing upon them. However, I do not think that carefully guarding freedoms means that governments can never act when such freedoms are potentially in issue. We must look at what is being proposed in the context of the time in which it is being proposed.

We have all read and seen much of what occurred on September 11. I believe, however, that for our purposes, it would be instructive to reflect for a moment on three events that occurred before September 11. This, I feel, will help us focus on the purpose and logic of this legislation.

We are told that Mohamed Atta and Fayeze Ahmed each piloted commercial jets into the World Trade Center. We know that on one occasion in the year 2001, Mohamed Atta had \$110,000 wired to him from a Western Union office in the United Arab Emirates to Citibank in New York and that he then forwarded the money to SunTrust Bank in Florida, where he was training to be a pilot. We know this because the United States Treasury Department received a suspicious activity report on the aforementioned transactions pursuant to the 1994 Suppression of Money Laundering Act, an act somewhat akin to our own Bill C-22, Proceeds of Crime (Money Laundering) Act. This document about Mohamed Atta sat useless and impotent on a desk in the Treasury Department in Washington on September 11. Without Bill C-36, a similar document would also be rendered ineffectual in Canada, as Canadian authorities would continue to be isolated from other investigative bodies and, as a result, would not be privy to the information.

We also know, honourable senators, that German authorities in Hamburg had Mohamed Atta and certain of the other hijackers under surveillance because they were living in an apartment frequented by others whom the German authorities had under surveillance. The German authorities were not alerted to Atta because he had no terrorist history. The important mechanism in Bill C-36 is that, among other things, it removes the barriers between nations and allows the various threads of information to be knit together, thereby reducing the possibility of such an individual slipping through the cracks, as Mr. Atta indeed did.

Finally, we now know that the United States is and —

The Hon. the Speaker: I am sorry to interrupt Honourable Senator Furey, but it being 5:15 p.m., pursuant to the order adopted by the Senate on December 14, 2001, it is my duty to

interrupt the proceedings to dispose of the question on the motion of Senator Finnerty for second reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

Debate suspended.

APPROPRIATION BILL NO. 3, 2001-02

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

The Hon. the Speaker: Call in the senators.

• (1730)

Motion adopted and bill read second time on the following division:

YEAS THE HONOURABLE SENATORS

Austin	Kenny
Bacon	Kirby
Banks	Kolber
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Moore
Corbin	Morin
Cordy	Phalen
Day	Poulin
De Bané	Poy
Fairbairn	Prud'homme
Finestone	Robichaud
Finnerty	Roche
Fraser	Rompkey
Fury	Setlakwe
Gauthier	Sibbeston
Gill	Sparrow
Grafstein	Stollery
Graham	Taylor
Hervieux-Payette	Tunney
Hubley	Watt
Jaffer	Wiebe—53
Joyal	

NAYS

THE HONOURABLE SENATORS

Andreychuk

Atkins

Beaudoin

Bolduc

Buchanan

Comeau

Forrestall

Johnson

Kelleher

Keon

Kinsella

LeBreton

Lynch-Staunton

Meighen

Murray

Nolin

Oliver

Rivest

Spivak

Stratton

Tkachuk—21

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. Isobel Finnerty: With leave, honourable senators, later this day.

The Hon. the Speaker: Is leave granted, honourable senators?

I had trouble hearing Senator Forrestall earlier. May I please ask for calm so that I can hear the answer?

Is leave granted, honourable senators?

Hon. Pierre Claude Nolin: Leave for what?

The Hon. the Speaker: Senator Finnerty is moving third reading of Bill C-45, and she is asking that leave be granted for consideration of this bill later this day.

Some Hon. Senators: No.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Later this day, we will be debating the motion to adopt this bill at third reading, which motion is open to debate, correct?

The Hon. the Speaker: Normally, the time frame for second to third reading is one day. It is not a debatable motion. Once the matter comes up for consideration, debate goes on at third reading.

Perhaps I could read rule 66(3), which is what I am relying on in asking for a motion at this time. It reads as follows:

When, under the provisions of any rule or order of the Senate, the Speaker is required to interrupt the proceedings for the purpose of putting forthwith the question on any business then before the Senate or when a standing vote has been deferred pursuant to rule 68, the Speaker shall interrupt the said proceedings not later than fifteen minutes prior to

the time provided for the taking of the vote and order the bells to call in the Senators to be sounded for not more than fifteen minutes immediately thereafter. These provisions shall apply, in particular, to the disposition of non-debatable motions —

— which this is —

—and any motion for which a period of time has been allocated to the disposition of the debate.

As I say, honourable senators, I am relying on that rule for putting the question as to when third reading will occur. Senator Finnerty moved third reading for later this day. That requires leave and leave is not granted.

Senator Kinsella: On behalf of the official opposition, we agree to debate the third reading later this day.

The Hon. the Speaker: It is agreed, then.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, last Friday...

[English]

The Hon. the Speaker: I must rise, Senator Prud'homme. I know all honourable senators know this, but the motion of Senator Finnerty is not a debatable motion. You could withhold leave or not, but this is not a debatable motion.

The Hon. the Speaker: Is leave granted, honourable senators?

Senator Prud'homme: No.

The Hon. the Speaker: Leave is not granted.

Hon. Anne C. Cools: Honourable senators, I believe that leave had already been granted by the time that Senator Prud'homme rose. Absolutely. Point of order!

Senator Nolin: I said "no" before him.

Hon. Anne C. Cools: Point of order. Leave was granted actually twice when Senator Finnerty first put the question. It was granted then. Then His Honour proceeded to expand on the matter and to make some commentary.

Senator Nolin: I said "no" the first time.

Senator Cools: Then again, after that commentary, leave was put and asked for and senators said yes. After that agreement, then Senator Prud'homme rose to his feet. In point of fact, leave had been granted twice. In this particular and immediate case, leave is clearly granted.

The Hon. the Speaker: This is a point of order.

Senator Prud'homme: Point of order.

The Hon. the Speaker: Senator Cools has risen on a point of order to say that leave was granted, and I will hear interventions on the point of order.

• (1740)

Senator Prud'homme: I know there are all kinds of tremblings, but I was not the first one to say "no." Senator Nolin said "no," then Senator Kinsella got up and spoke for his side. Of course, Senator Nolin did not push further after his deputy leader had given agreement.

Senator Nolin may withdraw his "no," but that is why I got up. He said "no" first and I was the second to say "no." I will explain why I did so in due course.

The Hon. the Speaker: Honourable senators, I will review what I believe to be the case. Senator Finnerty moved the motion and asked for leave. I was not able to hear. I wanted to be very sure. I heard Senator Nolin say that leave was not granted.

I then looked back at Senator Finnerty and asked if there was leave. Senator Kinsella rose and said, "On behalf of the opposition, we grant leave." He does not speak for independent senators. Senator Prud'homme said, "No, leave is not granted." I am afraid, honourable senators, that leave is not granted.

Hon. John G. Bryden: I rise on the point of order, honourable senators. I believe that if we review the transcript, we will find that when Senator Prud'homme rose, he did not say "no." Rather, he said, "Last Friday, I —", at which point His Honour stood up and Senator Prud'homme sat down. He did not stand up and say "no." Your Honour said that leave had been granted and he started to make a speech.

An Hon. Senator: No, you are wrong.

Senator Bryden: That is what he said.

The Hon. the Speaker: We can clear this up.

Did you withhold leave or not, Senator Prud'homme?

Senator Prud'homme: I said "no." In French, it is "non."

The Hon. the Speaker: It is moved by the Honourable Senator Finnerty, seconded by the Honourable Senator Rompkey, that Bill C-45 be placed on the Orders of the Day for third reading at the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

On the motion in amendment of the Honourable Senator Murray, seconded by the Honourable Senator Buchanan.

That Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(a) by adding after line 19 the following:

"Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(b) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

The Hon. the Speaker: Senator Furey has nine minutes remaining.

Hon. George J. Furey: Honourable senators, we now know that the United States is and has been holding Zacarias Moussaoui in custody since August 17, 2001. This December, a United States Grand Jury indicted Moussaoui for conspiracy to commit acts of treason. The Grand Jury indictment states, among other things, that Moussaoui was training to be a pilot. He was in contact with and receiving money from the same persons overseas as were the other hijackers. In August, fortunately, Moussaoui was detained on alleged immigration violations.

The question, honourable senators, for our purposes, is to ask whether anything would have been achieved if the United States had vigilantly shared intelligence information with its allies. Would anything have been achieved if the United States had carefully pursued its money laundering suspicions? Finally, what would have happened if the United States had not discovered the immigration violations committed by Moussaoui that led to him being detained in August?

We cannot answer these questions definitively, but we can say that if Moussaoui was the probable fifth hijacker on Flight 77 that crashed in Pennsylvania, it was indeed a good thing that he was detained.

It could not have been a bad thing for the United States if its Treasury Department had investigated a suspicious transaction involving Mohamed Atta. We can say that it would not have been a bad thing if the United States had linked the German intelligence information with the suspicious transaction report of Mohamed Atta. If Atta had been detained by the United States, indeed, it would not have been a bad thing.

All of these things, honourable senators, involve government action in anticipation of the event, not, as is generally the case in our Canadian tradition, after the event.

All of these things implicate individual rights. I note, in particular, that these facts speak directly to the instruments in Bill C-36 involving preventive arrest and investigative hearings. The facts mentioned above justify the use of these instruments in a way that would essentially not have been open for debate prior to September 11.

Honourable senators, I should like to reflect for a moment on the fact that, as a society, we have had this debate before. For example, for many years, Canadians have become more aware and more intolerant of drunk driving. This insidious crime has killed countless numbers of innocent people. Governments across the country undertook a sustained effort to end this evil. In doing so, government action came in direct contact with the Charter of Rights and Freedoms on the issue of detention without charge. The Supreme Court of Canada admitted that random roadside checks were certainly a breach of our section 9 right to be free of arbitrary detention and arrest. However, the purpose of the check was so important in relation to detection and risk of detection of drunk drivers that it was upheld as a reasonable limit in a free and democratic society under section 1 of the Charter of Rights and Freedoms.

Drunk driving is an insidious, repetitive crime, but it is the way we addressed ourselves to the question of this crime that is instructive. After measured judgment, governments decided that the arbitrary detention implied by the roadside check programs were the appropriate response to the evil that had to be confronted. The legislature acted and, in the ordinary course of things, the courts, armed with the Charter of Rights and Freedoms and the benefit of actual fact situations, reacted and confirmed the government's approach.

It is important to remember, honourable senators, that if these powers had been abused — and indeed they were at times — the courts adjusted these problems on a case-by-case basis. When the police, in a given incident, used a roadside check to pursue other agendas, courts found this to be inappropriate and held the police in check. The government did not rescind legislation properly aimed at one evil because of the inevitable excesses that may happen with any police authority.

When Bill C-36 becomes law, honourable senators, if and when we are faced with fact situations that suggest that state conduct is inappropriately extreme, we will see these matters addressed in the courts of our country. The courts will decide whether this legislation is constitutional, and we will have the further opportunity to hear about its operation. As well, as the Honourable Leader of the Government in the Senate said in her reply to Senator Andreychuk, there are sufficient oversight provisions in this legislation. She named the following: We have a judicial review; we have reports to Parliament; we have reviews by the Privacy Commissioner and the Information Commissioner; we have a three-year review; we have a sunset clause under preventive arrest and investigative hearing provisions; we have the RCMP Public Complaints Commission; and we have provincial complaints commissions. With the greatest respect, there are many oversights to ensure that there is fairness and equity in the application of this bill.

In addition, honourable senators, as I mentioned above, we are not the last institution that will give reflective second thought to this legislation. The courts will give it further thought. It is with this security and the aforementioned safeguards in mind that I am satisfied to support this legislation without amendment.

• (1750)

Bill C-36 will not guarantee that we will find terrorists before they act, any more than roadside checks cannot guarantee against drunk driving. However, the instrument is rationally aimed at the things that we can do to raise the risk of detection.

It is perhaps not entirely unsuitable to quote Abraham Lincoln, who said on December 1, 1862, in relation to his Declaration of Emancipation:

The dogmas of the quiet past, are inadequate to the stormy present.

With new challenges, we must think anew.

I realize that some honourable senators may think it ironic that I would quote a speech giving freedom in support of a law that may infringe freedom. I do not look upon it that way. Rather, I think and feel that we all know the freedom that we enjoyed on September 10 and that we hope to enjoy again. The freedom to fly without anxiety and the freedom to move across borders are examples that I am sure we all reflect upon.

The largest freedom, to be free of the carnage of September 11 in Canada, in the United States and, indeed, in the rest of the world is the true and best purpose of this bill. It is for this reason that I would encourage all honourable senators to support the bill without amendment.

Some Hon. Senators: Hear, hear!

Hon. David Tkachuk: Will the honourable senator entertain a question?

The Hon. the Speaker: I have just been advised by the clerk that the 15 minutes for Senator Furey's speech, comments and questions have expired. Is the Honourable Senator Furey asking for leave?

Senator Furey: No, I am not.

The Hon. the Speaker: Senator Furey would have to ask for leave. It is his time, and he is not asking for leave.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): We would be very happy to have Senator Furey on the opposition, if he would be prepared to withdraw that statement he just made.

The Hon. the Speaker: Senator Furey, there is another invitation for you to request leave.

Hon. Fernand Robichaud (Deputy Leader of the Government): I would be very happy if the honourable deputy leader were to reconsider the understanding we had this morning, and then perhaps I would ask Senator Furey to reconsider his position.

Some Hon. Senators: Hear, hear!

Hon. John Lynch-Staunton (Leader of the Opposition): On a point of order, if I may, that is an uncalled-for comment.

Some Hon. Senators: Oh, oh!

Senator Lynch-Staunton: If honourable senators do not want to hear an explanation, then carry on.

Senator Kinsella: Perhaps the Honourable Deputy Leader of the Government wishes to outline the agreement of which he speaks.

Senator Taylor: What is the use? You will forget it in an hour.

Senator Carstairs: You have forgotten it already.

The Hon. the Speaker: This is a procedure we often utilize, honourable senators. It is not on the Order Paper, but house leaders do discuss house business. Is it your wish to proceed to a discussion?

[Senator Furey]

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Senator Kinsella will speak on Bill C-36.

Senator Kinsella: Honourable senators, I was beginning to rise to speak on Bill C-36 when His Honour assumed that Senator Furey sat on the opposition side. I would be happy to have Senator Furey in our caucus.

The judgment that I am really concerned about, honourable senators, is the judgment that history will accord to this class of senators who were on the watch when this terrible piece of legislation, which strikes the dagger into the heart of Canadian civil liberties, is adopted by the Liberal majority in this place.

Senator Bryden: That is why the Conservative leader voted for it.

Senator Kinsella: The whole issue, honourable senators, is balance.

Senator Bryden: Does that mean you are now changing the party's position?

Senator Kinsella: The issue is where one draws the balance between human rights and civil liberties. The balance, unfortunately, seems to be going with the majority in the direction of state power and away from human rights.

If one were to ask a rhetorical question as to whether members of the Senate will be grouped with those in the other place of all parties who have come down on the side of the state party, I think the answer will be yes. This is what the majority will do. We have invited the majority to test its will against the rule of two-thirds majority, but it has failed to accept that invitation.

Honourable senators, our class of senators is supposed to exercise sober second thought and return Bill C-36 to the House of Commons with the kind of amendments that were articulated and laid out clearly in the first report of the Special Senate Committee on Bill C-36, a report which was unanimously adopted by the Senate.

We have before us an attempt by my colleague Senator Murray to have one final reflection given to the wisdom of having a parliamentary monitor set in place: an officer of Parliament. This was the unanimous decision of the Senate when it embraced the first report. Indeed, it would have been a concrete step to return the balance between human rights, on the one hand, and state power on the other. This would have been an opportunity — and is an opportunity — for the bill to be amended to provide for an officer of Parliament to be appointed within 90 days of the bill receiving Royal Assent.

Let me add, in parentheses, that should we fail because of numbers in achieving this objective, hopefully the wisdom of the entire Senate in its first report will not be forgotten as we turn our minds to Bill C-42, phase two of the anti-terrorism legislation. If there is a phase three or phase four, there will be so much power in the hands of the state, and the rights of the citizen will be so much in jeopardy, that maybe by that time our friends opposite will see the wisdom of having an ombudsman, such as we have at the provincial level, in place at the federal level to deal with a maladministration of these extraordinary powers — maladministration that is not motivated necessarily by ill will on anyone's part. We are speaking about a safeguard. That is what the ombudsman does in all jurisdictions in Canada, save and except the federal jurisdiction.

We know the position of the Senate as per the first Senate decision taken on November 22. This officer of Parliament would monitor the exercise of the power provided to the state under this bill. The officer of Parliament would be able to serve as a federal ombudsman to whom Canadians individually or collectively could report any maladministration of powers under this anti-terrorism bill and, indeed, future anti-terrorism legislation. The provincial ombudsman offices are already in place and could deal with the complaints resulting from provincial authorities abusing the powers under this bill.

Consequently, I was pleased, honourable senators, to see the Canadian Council of Criminal Defence Lawyers state:

This legislation requires an independent ombudsman, not to interfere but to oversee.

A retired Justice of the Supreme Court of Canada or Provincial Appellate Court should be named as an overseer and given the tools to do so effectively.

All preventive arrests, investigative hearings, their results, all Ministerial certificates issued, and the reasons therefore, must be reported to this "Overseer" annually.

This Ombudsman could hear Ministerial requests for the nondisclosure to Parliament of matters set out in the annual review report provisions. In this way meaningful independent accountability would be effective.

The Council of Criminal Defence Lawyers continued —

The Hon. the Speaker: Senator Kinsella, I rise because it is six o'clock. Unless someone asks and unanimous agreement is given not to see the clock, I must leave the Chair. Is there unanimous agreement that I not see the clock?

Some Hon. Senators: No.

The Hon. the Speaker: Then I must leave the Chair. The sitting will resume at eight o'clock.

The sitting of the Senate was suspended.

• (2000)

At 8 p.m. the sitting of the Senate was resumed.

ADJOURNMENT

Leave having been given to revert to Government Notices of Motion:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)*h*, I move:

That when the Senate adjourns today, it do stand adjourned until 9 a.m. on Tuesday, December 18, 2001.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

On the motion in amendment of the Honourable Senator Andreychuk, seconded by the Honourable Senator Nolin, that Bill C-7 be amended, in clause 2,

(a) on page 2, by adding, immediately before line 3, the following:

"2.(1) An object of this Act is for the law of Canada to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and

(b) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

Hon. Terry Stratton: Honourable senators, if I may, I would like to refer to the vote I had deferred until tomorrow at 5:30. There is agreement now to defer that vote until 10 a.m. tomorrow morning.

The Hon. the Speaker: I require the agreement of all senators with no dissenting voice. Is it so agreed?

Some Hon. Senators: Agreed.

Hon. Marcel Prud'homme: Honourable senators, since things are developing rapidly, would you kindly tell us exactly what you have been asked. I was absent last Friday for three minutes, and something was dealt with so quickly that I could not oppose it. I want to be sure of what we are agreeing to since things are moving so fast.

The Hon. the Speaker: The question, honourable senators, is whether the vote on the amendment of Senator Andreychuk to Bill C-7 will be held not at 5:30 tomorrow afternoon but at 10 a.m. We sit at 9 a.m.

Senator Prud'homme: Would Your Honour tell us how long the bells will ring, et cetera?

The Hon. the Speaker: Because it is pursuant to an order of the Senate, the rules provide that proceedings are interrupted 15 minutes prior to the vote, and that rule will apply in this case.

Senator Prud'homme: I am delighted to give my agreement to a fine gentleman, the chief government whip, who has consulted me.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. Douglas Roche: Honourable senators, for those who have to make travel arrangements to distant places, can the deputy house leader tell us at what hour tomorrow the vote will be held on the third reading of Bill C-36?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we have come to an agreement, and I want to thank the people who agreed, that debate on Bill C-36 would come to an end prior to three o'clock, at which time we are hoping to hold Royal Assent.

Hon. Marcel Prud'homme: Honourable senators, an order was passed earlier this afternoon for a possible debate of two and a half hours on the closure. That means 15 senators could speak for 10 minutes each. That is two and a half hours. Then you have six hours after that. With all due respect to my esteemed colleague, if we have two and a half hours starting at 9:30 a.m., plus six hours of debate, possibly, I do not know how you can have an agreement for 3:00 p.m., without having not only one closure but a double closure. You are having a closure on closure, and then we dispose of closure because this is debatable.

I put to His Honour that we would have to first dispose of the motion to have closure. That could be up to two and a half hours. I do not imagine it will take two and a half hours, but I do not know. I will certainly have a few words to say. Once we finish that, there could be a possible six-hour debate on Bill C-36. Either we feel very strongly about Bill C-36, or we do not. Either we believe that Bill C-36 is in the interests of Canada's reputation or not.

Having said all that, this is a surprise to me. I agreed tonight that we sit at 9 a.m. tomorrow. I agreed that we vote earlier on Senator Andreychuk's amendment, but how many more agreements do you want? We should let the universe unfold, and if some senators have other places to go, I am sure they can say so publicly before they leave. Canadians are reasonable and will understand.

• (2010)

The Hon. the Speaker: Honourable senators, and Senator Prud'homme in particular, I cannot answer. Senator Robichaud may wish to comment.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, as Senator Prud'homme has pointed out, a period of time is allotted for debate on the motion of closure or time allocation and, when it is proposed, a period of time allotted for debate on the main motion. This is the holiday season, and we are exceptionally optimistic. We will be able to proceed without denying anyone, and certainly not senators who say they are affiliated with neither of the two main parties in this Chamber, the opportunity to speak.

[English]

Senator Prud'homme: I understand, then, that a three o'clock deadline is unnecessary because it could be finished sooner. Why is there a double deadline? Some senators want to be accommodated, while for others it is not as important. If the universe is allowed to unfold, things may turn out favourably by tomorrow, without putting two closures on something that will happen anyway.

[Translation]

Senator Robichaud: Honourable senators, we do not wish to provoke further debate on this matter, we are simply trying to establish a reasonable time to hold Royal Assent, namely at about 3 p.m. If senators wish to leave before, that is their decision.

[English]

Senator Prud'homme: I am aware that the rules are being applied. However, are there other pieces of legislation that honourable senators want to pass before three o'clock, or is the debate only about Bill C-36? In that case, we will continue tomorrow, when the Orders of the Day could be changed such that Bill C-7 is called before Bill C-36 is called. I intend to cooperate, but I should like to know the intention of the house because I want to be on the side of history.

[Translation]

Senator Robichaud: Honourable senators, tomorrow, our intention is to study Bills C-6, C-7 and C-45 first. We will then consider the time allocation motion and move on to Bill C-36.

[English]

Senator Prud'homme: There will be many new amendments to Bill C-7. Is it your intention to dispose of Bill C-7 before Bill C-36? If that is the intention, it makes no sense.

[Translation]

Senator Robichaud: Honourable senators, as I was saying, we are very optimistic and will try to proceed in that fashion. We will see tomorrow what happens.

[English]

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,

On the motion in amendment of the Honourable Senator Murray, seconded by the Honourable Senator Buchanan:

That Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(a) by adding after line 19 the following:

“Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(b) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

The Hon. the Speaker: Honourable senators, we are on Senator Murray's amendment to Bill C-36. Honourable Senator Kinsella has eight minutes left.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, when I spoke to the bill earlier, I was quoting from a letter from the Canadian Council of Criminal Defence Lawyers, who have appealed to the Senate to amend Bill C-36 so as to provide an oversight mechanism such as envisioned in the amendment of Senator Murray.

The letter from the Canadian Council of Criminal Defence Lawyers states:

The main problems with this legislation are the sections which authorize operations in the dark.

There are many possible activities with powers that will be exercised very much in the shadows. With the simple provision of an officer of Parliament, who will provide monitoring and oversight, perhaps Canadians could achieve a second level of security, because someone will be watching the state. That is the balance that we believe is necessary.

Ombudsman offices are key features of democracies in the modern world. As I mentioned, across Canada the success of those institutions has been proven at the provincial level. The ombudsman oversees conflicts of interest and the workings of ministries. In this way, while trusting in our elected representatives, we ensure checks and balances along the way.

The letter from the Canadian Council of Criminal Defence Lawyers concludes:

We urge the Senate to do no less with Bill C-36. In the rush to proclaim new measures of security, in these dark times, we should ensure a glimmer of light.

Honourable senators, we are faced with a need parliamentary for oversight. The powers provided in Bill C-36 must be subject to an ongoing oversight by Parliament, including the responsibility of reviewing and reporting on the exercise of the powers, when they are being exercised, in detail and on a timely basis. It must include access for some parliamentarians to information that is not ordinarily available to the public. Bill C-36 leaves, frankly, too much power concentrated in the executive.

Bill C-36 must be amended by reconstructing and intensifying the role of the representatives of Parliament — not merely those who sit in cabinet or in the ruling party's caucus.

The model of parliamentary oversight that is being proposed — review and monitoring — can provide safeguards over and above those afforded by juridical review under the Charter and/or the Canadian Bill of Rights. While the Charter review is obviously an important protection of our rights and liberties, it is also slow and very expensive, particularly for the claimant. Usually, it is piecemeal rather than comprehensive in scope.

The Special Senate Committee on Bill C-36 did the pre-study of the bill. The subsequent adoption of the report by the full Senate chamber took place after the government made known its amendments in the House of Commons committee. The position of the Senate is that we need an officer of Parliament appointed to monitor the exercise of the powers granted to the government in this bill. It is my view that the officer of Parliament must be established by Bill C-36 to provide the needed monitoring and supervision of the legislation.

On motion of Senator Beaudoin, debate adjourned.

• (2020)

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, to amend the International Boundary Waters Treaty Act.

Hon. Lowell Murray: Honourable senators, when this bill was before us for the debate on second reading, five members of the Progressive Conservative opposition spoke to it: Senator Carney, Senator Bolduc, Senator Andreychuk, Senator Spivak and I. We agreed that there was a need for legislation in this field. We even agreed at that time with the basic premise of the government's approach, namely, that in order to prevent the export of water, water should be treated as a resource, not as a good; that it should be treated as an environmental, not a trade issue; and that water should be dealt with at the basin, rather than at the border.

However, we were opposed to the unfettered power proposed in Bill C-6 for the Governor in Council to make exceptions both to the licensing provisions of this bill and to the so-called prohibition provisions. We were opposed to the blanket authority for the Governor in Council to make those kinds of exceptions by regulation. What is the point of a prohibition if there is a total discretion given to the cabinet to make exceptions to the prohibition? That is not a prohibition at all.

In the regulatory authority, there is also the ability for the government to define any word or phrase in the act that is not otherwise defined and to do so by regulation. We find that by making regulations or, indeed, as one of the expert witnesses pointed out to us at committee, by abstaining from making regulations, future governments will be in a position to negate the entire purpose of the bill.

The bill received second reading and was referred to committee and the five of us from this caucus went to committee.

We heard from the minister, and from senior officials of the departments of Foreign Affairs, Justice and the Environment.

Apart from the minister and his officials, no other witness wanted this bill to pass in its present form. Who were these other witnesses? They were expert witnesses, honourable senators, not people with a political or special interest axe to grind. Of particular note, we heard from the following witnesses: Ms Anne Sullivan, a professor from the faculty of law at the University of Ottawa, a former officer of our own Department of Justice, and an expert in legal drafting; Mr. Michael Hart, a professor from the Norman Patterson School of the Centre for Trade Policy and Law, at Carleton University; Mr. Barry Appleton, a trade lawyer with Appleton and Associates; Dr. Howard Mann, another former legal counsel for the Government of Canada with whom he spent five years and who has a legal and consulting practice in international environment and sustainable development law; and Mr. Nigel Bankes, a professor of law at the University of Calgary.

Almost all of these witnesses agreed that they want legislation. All of them agree with the intent of the bill. However, not one of them wants to see the bill passed in its present form.

The two trade lawyers told us that the premise is wrong, that water is a good, no matter what the government says. The question is: When does that good come into commerce of any kind, not just international commerce? After an examination of this bill, these trade lawyers insist that the process envisaged under Bill C-6, including the licensing regime for inbasin waters would make it more difficult to keep water out of commerce.

The trade lawyers told us that a more comprehensive approach is needed and they have suggested amendments that were reflected in the amendments that the Conservatives proposed at the committee and which were defeated along party lines in that committee.

Professor Bankes, a constitutionalist, told us that this bill is highly vulnerable to a successful court challenge on two counts. The first is the famous deeming clause that honourable senators will find under proposed section 13(2), where removing water from boundary waters and taking it outside the water basin is deemed to affect the natural level or flow of waters, whether or not it does. As Professor Bankes pointed out, that deeming provision has been put in there strictly to lend some constitutional justification for a provision that cannot be justified under section 132 of the Constitution Act. Section 132 gives Parliament power to implement international treaties.

The second count on which Professor Bankes thinks the bill will be highly vulnerable to a constitutional challenge is that the bill purports to erect a prohibitory scheme where the treaty that it purports to implement envisages only a regulatory scheme. Professor Bankes also drafted an amendment for us.

All of these people, led by Professor Fleming, the expert legal draftsman, are convinced that this bill will not do what it was intended to do. They believe that the fatal flaw of the bill is the unfettered regulatory authority which it will accord to the Governor in Council. Professor Fleming called the bill a paper tiger. She said it is smoke and mirrors. I could go on to quote, as I did at the committee, chapter and verse from the various witnesses who appeared before the committee who spoke in the same vein.

Honourable senators need not agree with the criticisms that have been made either by Conservative colleagues or by the witnesses who appeared before us. However, there has been sufficient doubt cast on critical areas of this bill that the conclusion for us is inescapable: We ought not to allow this bill to go through as it is.

Honourable senators, there are various amendments that I would like to move and could move, including one that was drafted by Professor Bankes, to try to render the bill less vulnerable than it is to a successful constitutional challenge. However, for the moment, I will concentrate on the regulatory authority that the bill proposes to give to the Governor in Council. I will propose an amendment that will put Parliament back into the loop, so that we are not constantly governed by regulation and by a blanket regulatory authority granted to cabinet to exercise as it sees fit.

I repeat: The regulation-making authority in this bill will allow cabinet to make exceptions to the licensing provision. They will be able to make exceptions as they see fit to the prohibition provision. They will be allowed to define or de-list the basins to which the licensing provisions and the prohibition apply, which means that they could completely gut the proposed section 13 of the bill. The government will be able to define any word that is not defined in the bill. As honourable senators know, in any respectable piece of legislation, definitions are included. We want to put Parliament back into the loop. Honourable senators, I have a very practical amendment that I put forward for your consideration.

• (2030)

MOTION IN AMENDMENT

Hon. Lowell Murray: Honourable senators, I move, seconded by Senator Oliver:

That Bill C-6 be not now read a third time but that it be amended, in clause 1, on page 5, by adding after line 12 the following:

(3) The Governor in Council may only make a regulation under subsection (1) where the Minister has caused the proposed regulation to be laid on the same day before each House of Parliament and

(a) both Houses of Parliament have adopted resolutions authorizing the making of the regulation, or

(b) neither House, within thirty sitting days after the proposed regulation has been laid, has adopted a resolution objecting to the making of the regulation.

(4) For the purposes of paragraph (3)(b), "sitting day" means a day on which either House of Parliament sits.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

On motion of Senator Andreychuk, debate adjourned.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET—STUDY ON STATE OF HEALTH CARE SYSTEM—
REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the tenth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—release of additional funds (study on the state of the health care system in Canada)) presented in the Senate on December 11, 2001.—(*Honourable Senator LeBreton*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on behalf of Senator LeBreton, I move the motion standing in her name.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

BUDGET—STUDY ON STATE OF FEDERAL GOVERNMENT POLICY
ON PRESERVATION AND PROMOTION OF CANADIAN
DISTINCTIVENESS—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eleventh report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—release of additional funds (study on Canadian identity)) presented in the Senate on December 11, 2001.—(*Honourable Senator LeBreton*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on behalf of Senator LeBreton, I move the motion standing in her name.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:

That the Senate of Canada recommends that the Government of Canada recognize the date of August 15th as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(Honourable Senator Day).

Hon. Joseph A. Day: Honourable senators, I hope that this matter on which I will speak this evening will bring some dramatic relief compared to the other matters we have dealt with here in the last couple of days. I am hopeful, honourable senators, that we can agree to unanimously support this motion.

[Translation]

I am extremely pleased to rise in this Chamber today to take part in the debate on the motion that the Senate of Canada recommend that the Government of Canada recognize the date of August 15 as the *Fête nationale des Acadiens et Acadiennes*.

[English]

I would point out, honourable senators, that my intervention today is to participate in the debate on the motion of Senator Losier-Cool, and does not deal with the motion for second reading of Bill S-37, moved by the Honourable Senator Comeau.

Honourable senators have heard several of our colleagues discuss various aspects of the contribution of Acadian people to Canada. Today I speak as a resident of Southern New Brunswick to give my perspective on why this chamber should support this motion.

Honourable senators will have noticed that there are in fact two aspects to this motion. One is the recognition of August 15 as la *Fête nationale des Acadiens et Acadiennes* and the second is the recognition of the contribution of the Acadian people, economically, culturally and socially.

Honourable senators, the date for la *Fête nationale des Acadiens et Acadiennes* has been chosen for some time. This concept is not something new from the point of view of the Acadian people. An assembly of Acadians met in Memramcook in 1881 to discuss this very subject. It is interesting that there was at that meeting a strong debate between choosing la *fête de Saint-Jean-Baptiste*, which was la *fête nationale des Canadiens français*, principalement du Québec, celebrated on June 24, and la *fête Notre-Dame de l'Assomption*, celebrated on August 15.

[Translation]

The supporters of the Feast of the Assumption felt that the history and nationality of the Acadians differed from that of the French Canadians and thus a specifically Acadian holiday was required to reinforce that very specific national identity.

[English]

For over 120 years, therefore, the Acadians have recognized August 15, la *fête Notre-Dame de l'Assomption*, as their *fête nationale*.

• (2040)

The Province of New Brunswick recognizes August 15 as the *Fête nationale des Acadiens et Acadiennes*. I therefore ask why we, as Canadians, would not recognize this important day of the Acadian people who live and participate within our country.

Who are the Acadians? Let me answer this question by quoting Antonine Maillet:

[Translation]

The Acadians are a people and a people is stronger than a country. A country is an institution, but a people is stronger than an institution, because it has a soul, it has dreams, it has life.

[English]

The Acadians are a people. The Honourable Senator Losier-Cool has told us of the significant economic contributions made by the entrepreneurial spirit of the Acadian communities.

[Translation]

Senator Léger has spoken of their cultural contribution.

[English]

Their social contribution has been highlighted by Senators Corbin, Bryden and Comeau.

[Translation]

Senator LaPierre has given us a very fine historical perspective of the Acadians and of Acadia.

[English]

Permit me now, honourable senators, to describe the social, economic and cultural contributions of the Acadians to my region of New Brunswick, the southern part of the province. When the first families arrived with Pierre de Mont and Samuel de Champlain in 1604, they found the Saint John and Kennebecasis Rivers already used as transportation routes and the valleys inhabited by the Mi'kmaq and Maliseet First Nations peoples. Indeed, the Saint John River was named by Champlain on that voyage in 1604 when he found himself on the river on June 24, Saint-Jean-Baptiste Day.

As the Saint John River winds its way slowly, gently and occasionally ferociously throughout the full length of New Brunswick, passing many communities of peoples of many different origins, it passes Grand-Sault, an Acadian community and the home of the Honourable Senator Corbin. Further south it runs through the city of Fredericton, formerly an Acadian village known as Ste-Anne, and the home of the Honourable Senator Kinsella.

Before emptying its waters into the Bay of Fundy at Saint John, the river is joined by another important waterway, the Kennebecasis River. These two rivers were important trading routes and natural locations for the habitation of many Acadian communities over the past 400 years. Indeed, I have chosen as my designation as senator the area Saint John — Kennebecasis in recognition of the important historical and present contribution of these two rivers to the lives of the people of southern New Brunswick.

[Translation]

A number of speakers have referred to the challenges, the disappointments, the injustices, the successes and the joys of the Acadian community.

[English]

We cannot rewrite history, but we can and must learn from it. There is much we can learn from the history of southern New Brunswick and the Acadian people of that region.

The Saint John region saw a major influx of Loyalist refugees after they were stripped of their land and belongings following the American Revolution in 1783. Other major influxes of settlers came in the 1800s as a result of the potato famine in Ireland and the clearing of the highlands to make room for more sheep in Scotland. It may be that the injustices done to those people and the hardships that they suffered in forging a new life in our region resulted in a harmony between the various peoples not seen in other places.

Together, those peoples from various backgrounds worked cooperatively, building a strong and vibrant community, but at the same time maintaining their own cultures. Our laws and institutions made this possible. Our country today is better because of that diversity.

Several recent developments have helped to strengthen the Acadian community, and they should not go unmentioned, especially since some honourable senators of this chamber have been instrumental in bringing about those changes and have demonstrated that we can make a difference.

In 1969, then Premier Louis J. Robichaud led his government in passing the Official Languages of New Brunswick Act, making French an official language.

Richard Hatfield, then premier of the province in 1981, and Jean-Maurice Simard, both former members of this chamber,

introduced legislation to establish the equality of the two official languages.

In 1984, the Centre scolaire-communautaire Samuel-de-Champlain was opened in Saint John.

[Translation]

Roméo LeBlanc, Minister of Public Works at the time, came to Saint John to open the centre. In 1994, the first world Acadian congress and Acadian family reunion took place in Moncton, New Brunswick.

In 1998 came the inauguration of the parish church for the French Catholic parish of Saint-François de Sales in Saint John, the fruits of the efforts of many, including a good friend of mine, Laurier Doiron.

[English]

Each of these events helped to strengthen the fabric of the Acadian community in an area where it is a linguistic minority.

Today, in Saint John, you will find a vibrant Acadian community operating in harmony with the greater community. No better example can be found of that harmony than the organization begun by Mr. K.C. Irving who, of Scottish ancestry, grew up in the Acadian community of Bouctouche. He formed lifelong relationships with many Acadian families, which relationships have continued with his sons and grandchildren. Many successful citizens with whom I have had the pleasure of working bear witness to the Acadian contribution to the life of the Saint John region, names such as Gaston Poitras, Roméo Cyr, Rio St-Amant, Laurier Doiron, Reno Morin and Joel Lévesque are but a few. Martin Chiasson is manager of the Xerox customer support centre in Saint John which employs over 400 bilingual personnel. The convergence of information and communications technology, coupled with world leading technology, has made Saint John well known in this particular area. There are approximately 2,000 such positions in the Saint John region, many of whom are Acadian. It has been estimated that this particular segment of the economy in the Saint John region contributes \$70 million annually.

There is a recent publication, honourable senators, if I have at all twiggled your interest in the region of Saint John, to which I would like to draw your attention. It is entitled, *De la survivance à l'effervescence, portrait historique et sociologique de la communauté acadienne et francophone de Saint Jean Nouveau-Brunswick*, by Greg Allain et Maurice Basque.

In closing, honourable senators, permit me to quote from this particular publication to which I have just referred:

[Translation]

The Saint John area is an integral part of the history and the colonization of New France, as well as an integral part of the Acadia of today.

[English]

Honourable senators, I would, of course, be remiss if I did not invite you and your families to come to l'Acadie and experience for yourself the effervescence of our communities. I urge honourable senators to support this motion.

[Translation]

By any definition of these words, it is certain that Acadia exists. The Acadians are a living people. They have had their own fête nationale for 120 years: August 15. Perhaps recognition of this fête nationale by the Government of Canada is more symbolic than otherwise, but this symbolism is extremely important to them, and the time has come for Canada to proclaim August 15 the Fête nationale des Acadiens et des Acadiennes.

Debate suspended.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like to speak to Motion No. 81. But first, I want to inform you that an agreement has been reached between senators from the official opposition and the government regarding Bills C-45, C-7 and C-6.

[English]

Therefore, I move:

That pursuant to rule 38, no later than 12:30 p.m. on Tuesday, December 18, the Speaker put all questions necessary to dispose of all stages of the following Bills now before the Senate:

Bill C-6, An Act to amend the International Boundary Waters Treaty Act;

Bill C-7, An Act in respect of criminal for young persons and to amend and repeal other Acts; and

Bill C-45, An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

[Senator Day]

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Please call in the senators.

Hon. Bill Rompkey: Could we agree to a five-minute bell?

Hon. Terry Stratton: Five.

The Hon. the Speaker: It has been agreed between the whips that the bells will ring for five minutes prior to the vote. Call in the senators for a vote at 8:58 p.m.

• (2100)

Motion carried on the following division:

YEAS THE HONOURABLE SENATORS

Atkins	Kelleher
Austin	Kenny
Bacon	Kinsella
Banks	LaPierre
Beaudoin	Léger
Bolduc	Losier-Cool
Bryden	Lynch-Staunton
Callbeck	Maheu
Carstairs	Mahovlich
Chalifoux	Milne
Christensen	Moore
Comeau	Phalen
Cook	Poulin
Cools	Poy
Corbin	Rivest
Cordy	Robichaud
Day	Roche
De Bané	Rompkey
Fairbairn	Setlakwe
Finnerty	Sibbeston
Forrestall	Sparrow
Fraser	Spivak
Graham	Stollery
Hervieux-Payette	Taylor
Hubley	Tunney
Jaffer	Watt
Johnson	Wiebe—55
Joyal	

NAYS THE HONOURABLE SENATORS

Di Nino
Nolin
Prud'homme—3

ABSTENTIONS THE HONOURABLE SENATORS

Stratton—1

[Translation]

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:

That the Senate of Canada recommends that the Government of Canada recognize the date of August 15th as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(Honourable Senator Day).

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am pleased to rise to support the motion to recognize August 15 as the *Fête nationale des Acadiens et Acadiennes*.

A number of honourable senators alluded to the very impressive contributions of the Acadian people to Canada's socioeconomic and cultural life.

They told us about the history of Acadians, including their settlement, deportation and revival. They also stressed the efforts of religious communities and Acadian leaders to protect the interests of the Acadian people and its culture over the centuries. It may be that everything or most everything has been said regarding these aspects.

However, I would like to take a few minutes to tell you about the feeling of pride that leads Acadians to live fully wherever they are. This feeling of pride goes back a long time. It has its roots in the history of our people, and it is evoked and maintained through monuments and institutions in the villages of Acadia.

Honourable senators, the pride of the Acadian people is present and visible in many villages along New Brunswick's Acadian coast, in other provinces and wherever there are Acadians. Those who come to visit us can testify to that.

As regards my corner of the country, I think of the contribution by the Acadian leader, Monsignor Marcel François Richard, who played a vital role in the Acadian revival. More importantly, perhaps, he touched the lives of the people of Saint-Louis-de-Kent, of Rogersville and of all the communities he worked in.

I would mention that Monsignor Richard is the father of the Acadian flag. The first Acadian flag, adopted in 1884 at the Miscouche convention on Prince Edward Island was hand-stitched by the seamstresses of Saint-Louis-de-Kent, the

village where I live. Still today, the memory of Monsignor Richard is venerated with pride. The people of these villages happily and affectionately tend to the monuments erected by Monsignor Richard.

They are the rallying points in the communities. They help develop the people's identity and promote a feeling of belonging to a people and a culture. As well, there is the historic church of Barachois, which has become a cultural centre, and the Lefebvre monument in Memramcook, acknowledged to be the symbol of Acadian survival by the authorities of the Historic Sites and Monuments Board of Canada.

And then, at Bouctouche, there is the Pays de la Sagouine. It is a tourist and cultural site teeming with an endless stream of the most colourful and touching characters. The Pays de la Sagouine depicts an aspect of village life in my part of the country. It is a lively representation of a life that is simple but vibrant, cunning yet sensitive. The people are proud to see themselves depicted in these many appealing characters, whose principal interpreter, Senator Léger, has just joined us in the Senate.

Then there is our Acadian village of Caraquet, where homes have been rebuilt, and our ancestors continue the bustle of their daily lives. How many more monuments of Acadian pride are there to be found in the many villages of New Brunswick, Prince Edward Island and Nova Scotia? These cultural centres and museums are witness to the vibrancy of the communities and provide links to the greater Acadian community. These institutions provide a place for Acadians to gather to express their culture and promote their participation in community life and the development of their economy.

In recent decades, the growth of small- and medium-sized business in Acadian communities has been another source of pride. Along with big companies, such as the Assumption Mutual Life Insurance Company and the network of Acadian caisses populaires, have sprung up a multitude of small and medium-sized businesses in industries such as fishing, agriculture, forests and raw material processing. In addition, the goods and services sector is growing.

• (2110)

In observing the progress of past decades and visiting the places that bear witness to the lives of our ancestors, we can gain a better understanding of Acadian pride. The obvious conclusion is this: there have been people of vision, of courage and of determination who have made the decision not to let themselves be defeated by the tragedy of their past. These leaders have focussed instead on the future with hopes of better days ahead for their people; they have worked doggedly to create institutions to allow the Acadian people to develop, to regroup, to progress.

Yes, the Acadians did live through a period of great darkness, one that went on for a very long time, but women and men of faith and of heart, of action and of courage, have encouraged and helped the Acadians to establish institutions to ensure a better future for themselves.

The Acadians did not have to invent monsters or demons that had to be defeated before they could move on to a new start. Their energies were devoted to survival, of course, but also to building and creating, with a desire to live life to the fullest, to progress, to take an active part in community life, to find their place in the sun!

This pride in our past and in the courage of our ancestors is what has enabled us to legitimately demand official recognition of our survival and our right to live and develop our full potential in French in North America. The deportation was meant to ensure that we disappeared, yet we were to be reborn in the 20th century with vigour, vitality and determination. We have developed symbols and institutions to safeguard our language, our culture and our identity.

There has been no greater manifestation of Acadian pride than the Acadian World Congress, in 1994, and the VIIIth Summit of the Francophonie, in 1999. Houses proudly sported the colours of Acadia and we were enthusiastic in loudly proclaiming our pride as Acadians.

That pride is a very profound one; it is rooted in the courage of our ancestors and in the survival of our language and customs. The Acadians have a homeland, a land without borders. We have a flag, with its tricolour and star; we have a national anthem, the *Ave Maris Stella*; we share the French language, but the Acadians' French has a different flavour to it. Honourable senators, if you hear an Acadian speaking in a group, you will recognize him right away as the one without an accent.

We have our own customs, our froliques and tintamarres. We also have our own special dishes, poutines râpées and poutines à trou, salt cod, fricot, cod livers and stuffed cod stomachs we call "gos" — not to mention mioche. If anyone wants the ingredients for that, I have the recipe.

We are proud of these differences and proud of surviving in a homeland without borders. Our pride finds expression as well in our openness to the world. When we arrived in America, we established links, cordial relations, with Native peoples. Gradually, we built ties of mutual trust and respect that enabled us to help each other and to survive the pitfalls of the early days of the colony.

We still appreciate the support of the Native peoples. A number of Acadian families have blood ties with Native peoples, and I am proud to trace my blood lines with the Micmacs back eight generations.

No matter where we find ourselves in the world, be it Louisiana, Belle Île-en-mer, baie Ste-Marie, Petite Aldouane or Shippigan, we celebrate our national day in the company of our fellow citizens with our renowned warmth and with pride.

[Senator Robichaud]

Honourable senators, I enthusiastically support the Canadian government's choice of August 15 as the Fête nationale des Acadiens et Acadiennes.

The Hon. the Speaker: Honourable senators, I inform the Senate that if the Honourable Senator Losier-Cool resumes her speech now, it will end the debate on this motion.

Hon. Marcel Prud'homme: Honourable senators, we could adjourn the debate, but I care too much for the Acadian people to object to our agreeing this evening to recognize August 15 as the Fête nationale des Acadiens et Acadiennes.

I hope that, when Senator Losier-Cool has spoken and the debate on the motion is concluded, we may all celebrate this grand event. August 15 is a memorable date for me for a number of reasons. First, every year I take part in the grand procession of the Assumption, a great day for Montreal's Greek community, which has kindly made me an honorary Greek citizen.

For the past 30 years, I have taken part in this great procession, where I again recall the honour given me. I also think of this crushed and scarred people, which held fast against wind and sea. I think of the Acadians.

I also have a very emotional reason for remembering this day. It is the day my mother died, and when I take part in this procession of the Greek community of Montreal, I think of my mother, who died in 1959. And I think of the Acadians.

And so, I am delighted to support this motion. I did not intend to speak to this motion, because I told Senator Comeau that I hoped it would be adopted before we adjourned in haste. In haste, I say, because some are more drawn by pies, tourtières, turkey and other celebrations than by the responsibility of remaining in Ottawa and doing what the Canadian people wish us to do on its behalf.

I do not want us to rewrite history, either. I hope this will be well translated into English, because I see that half the people here do not understand French and are not hooked up to the audio system for the interpretation of my speech. That means that my speech must be pretty much going over their heads.

• (2120)

Whether they get hooked up or not is their problem. I got used to it. I chaired the national Liberal caucus and the Quebec caucus. I would make an effort, I would speak English to the Quebec caucus to accommodate two or three colleagues who did not speak French. I did it out of respect, as I will do it tomorrow when I pay tribute to one of our colleagues.

We must not rewrite history. It is very dangerous to rewrite history. I think that what was said of Acadia is true. Senator Léger was the first one to aptly describe it, as all the other senators who spoke on this issue did afterwards. However, I see that we veer off when we talk about history. A pope said that St. John the Baptist would be the patron saint of French Canadians wherever they live — particularly in Quebec, of course. He did not say “particularly in Quebec.” This is history. The patron saint of Quebecers is St. Anne, whose birthday is celebrated on July 26, as proclaimed by the same pope. I believe in these proclamations and in history. So, St. John the Baptist is the patron saint of all French Canadians and not, as they would have us believe — and I was surprised to hear this — the patron saint of French Canadians in Quebec. This is very serious.

I want to honour August 15 as the Fête nationale des Acadiens et Acadiennes because of everything they experienced throughout their history. If you think that St. John the Baptist is exclusively the patron of Quebecers, you are falling into the trap set by those who want to make Quebec a country different from what we believe in and what has brought us to the Senate of Canada.

All French Canadians and Acadians celebrated June 24 in Montreal. I remember what a big celebration it was in my family; as we all headed off to Sherbrooke St. to watch the Saint-Jean-Baptiste parade. People came from all over — not just Quebecers — to celebrate this festival of the great French Canadian people, which included the Franco-Ontarians, the Franco-Manitobans and so on. I have heard some on the other side here say: “I am not a Quebecer; I am Acadian.” It is strange; I would like my friend Senator Comeau to know that I am fully prepared to say: “Yes, you are of our blood.”

There are some who want to change the national anthem, the French lyrics of which were set to music by a French Canadian. The national anthem was given to this country as a gift. It is fine as is. Today, there are some who are bothered by the English translation, but that is your problem, not mine.

At the request of Mr. Pearson, I sat on the committee examining the national anthem, and he begged me to leave the authentic French version unchanged. If we do not stand up spontaneously to get things back on track, we begin to wonder if we all agree. Some senators wanted to take out certain words in the French version got it all wrong.

[English]

I will say it in English so all honourable senators will understand exactly. I even know some senators who have tried to change the authentic French.

[Translation]

They were bothered by the words “il sait porter la croix.”

[English]

They did not understand that “il sait porter la croix” does not mean “the cross of Jesus Christ.”

[Translation]

This means to put up with the hardships of life. Some even thought that we should amend the French version of that work of art, of that poem, as Senator Lapointe said.

It will give me great pleasure to hear Senator Losier-Cool ask us to support this motion. In so doing, we will extend a hand to our Acadian brothers and sisters who survived, often without, and this is unfortunate, the support of French Canadians from Quebec. You all know that I am a Canadien français. It is a concept that does not exist in English. I am a nationalist, a federalist, a Roman Catholic. I am not afraid of words.

I had to set some historical facts straight. I wanted to join honourable senators and say that I am pleased that we are proclaiming August 15 as the Fête nationale des Acadiens et Acadiennes. Senators represent not only regions, religions, colours and first nations, but also one of the best countries — as Jean Chrétien would say — provided no one thinks he is more important than the next person.

I say this in French and I hope that some unilingual English speaking colleagues are hooked up to the interpretation system and understand that I will not accept to sit in the Senate if we waste our time improving bills at the last minute. This is not the role of the Senate. The role of the Senate is to correct past mistakes, to help heal old wounds. This is why I will be glad to listen to Senator Losier-Cool.

• (2130)

The Hon. the Speaker: Honourable senators, I wish to inform the Senate that if the Honourable Senator Losier-Cool speaks now, her speech will have the effect of closing debate on this motion.

Hon. Rose-Marie Losier-Cool: Honourable senators, I want to extend my sincere thanks to all the senators who supported the motion that I proposed on October 25 of this year, recommending that the Government of Canada recognize the date of August 15 as the Fête nationale des Acadiens et Acadiennes.

Your speeches touched me by their energy, their eloquence and their deep attachment to Acadia. With this motion, I wanted to underline the contribution of the Acadian people to Canada's vitality, and you helped me do that.

I thank Senator Comeau for his participation in this debate. He gave us a good description of how August 15 is celebrated in his province of Nova Scotia. The artistic and cultural community in Acadia and in Canada is pleased and lucky to have Viola Léger as its ambassador in the Senate. In her speech, Sénateur Léger really showed the place that Acadian artists have on the national and international stage. The Acadian people is deeply rooted in its religious and Christian values.

I thank Senator Kinsella for showing in a very informative way the historical link between August 15 and the religious feast of the patron saint of the Acadians, Our Lady of the Assumption. Still today in many areas of Acadia on August 15 we start the day with religious celebrations. We have built our communities side by side with English communities through perseverance, tolerance and vision.

Senator Bryden highlighted this vision, especially when he talked about the contribution made by a remarkable Acadian whom I still miss a lot, Fernand Landry.

Mr. Landry had a limitless vision of Acadia. His devotion to the Acadian people was quite obvious during the Sommet de la Francophonie in Moncton, in 1999. Sadly this great champion and promoter of Acadia left us one year after doing such a tremendous job for New Brunswick. Fernand Landry exemplifies what the Acadian people is: dynamic, visionary, tenacious and kind.

I will quote from Senator LaPierre who reminded us how lucky Canada is to have had two French-speaking peoples who can communicate among themselves and with others. Two peoples who settled here thanks to Champlain, during the first decade of the 17th century.

Thanks to our accomplishments, we can now face the future with confidence. I am very proud of the Acadian people and of its numerous accomplishments as well as our contribution to the social, economic, and cultural fabric of Canadian society. And as Senator Corbin so eloquently put it, a modern, progressive and energetic Acadia is to be reckoned with in today's Canada. He added that it is appropriate for the Canadian government to declare August 15 the Fête nationale des Acadiens et Acadiennes, a people whose vitality, courage and fair play are greatly admired by all Canadians.

[English]

What a great occasion for Senator Day to give his maiden speech. I am sure all the Acadians in his area will be happy to read his speech.

[Translation]

If you have not yet planned your Christmas menu, I urge you to go over Senator Robichaud's speech, it will make your mouth water. He talked about salt cod, broiled meat and poutine à trou.

I urge you all to support this motion and then to come and celebrate August 15 with the Acadians. You will be thrilled by the many riches of our marvellous Acadia. As the singer and poet Donat Lacroix says "Come and see Acadia, my enchanting country!"

Honourable senators, pursuant to rule 30, with leave of the Senate, I should like to amend my motion to the effect that a message be sent to the House of Commons to inform it that the Senate has adopted the motion.

The Hon. the Speaker: Is permission granted, honourable senators?

[Senator Losier—Cool]

Hon. members: Agreed.

Motion, as amended, agreed to.

[English]

INTELLECTUAL PROPERTY RIGHTS OVER PATENTED MEDICINES

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Finestone, P.C., calling the attention of the Senate to three diseases which are sweeping the developing world and which draw many to ask whether intellectual property rights over patented medicines have not taken precedence over the protection of human life.—(*Honourable Senator LaPierre*).

Hon. Laurier L. LaPierre: Honourable senators, I rise to support and am pleased to speak on this inquiry initiated by Senator Finestone. I should like to do it before Senator Finestone leaves us tomorrow.

I make her comments mine when she says that we need to realize that the preoccupation of the West with the development of medicine tailored to North American afflictions such as impotence has left us vulnerable to tropical diseases that we in our complacency seem to have ignored.

My purpose today is to convince us all that the rise in drug prices is endangering the lives of millions of people living on the African continent, and the WTO TRIPS, or override Senator Finestone spoke of in her speech in this house, are simply not being used.

Honourable senators, listen carefully to the following, which can be found in the Impact of HIV/AIDS on Adult Mortality in South Africa, prepared by the Medical Research Council of South Africa:

While there is inevitably some degree of uncertainty because of the assumptions underlying both the model and the interpretation of the empirical data, we estimate that about 40 per cent of the adult deaths aged 15-49 that occurred in the year 2000, were due to HIV/AIDS and that about 20 per cent of all adult deaths in that year were due to AIDS.

● (2140)

When this is combined with the excessive death toll in childhood, it is estimated that AIDS accounted for about 25 per cent of all deaths in the year 2000 and that it has become the single, most frequent cause of death. The projections show that, without treatment to prevent AIDS, the number of AIDS deaths can be expected to grow in the next 10 years to more than double the number of deaths due to all other causes. It will result in 5 to 7 million cumulative AIDS deaths in South Africa by the year 2010.

Furthermore, 4.5 million people will die this year of AIDS and related diseases in Africa. We must also consider the implications of the spread of tuberculosis. AIDS and tuberculosis have been referred to as the "deadly pair." AIDS and tuberculosis. In South Africa, it is estimated that 32.8 per cent of the people who have AIDS also have tuberculosis. The problems defined above are mainly due to the stigmatization of HIV and TB patients, as well as confusing messages. For example, people have the misconception that all TB patients are HIV-positive or are suffering from AIDS. As a result, patients do not complete their treatment. Therefore, it is useful for policy-makers and program managers to implement health promotion strategies by disseminating clear and easy to understand information. Health education materials, such as pamphlets and posters, should be made available in the communities throughout South Africa.

As well, there is malaria, which, according to South African medical authorities, has been on the increase since 1995, with more and more cases being reported each year.

Honourable senators, South Africa is dying. Africa is dying. It is not because the authorities are not conscious of it, nor is it because South Africa does not have a plan, because it has. I do not know what the World Trade Organization can do and, frankly, I do not care. However, I do know what my country can do: make sensible and effective provisions to assist Africa.

This is the year of Africa, we are told, and yet the budget of December, 2001 states that, if my memory serves me correctly, we shall find \$500 million for the Africa Fund. I have no doubt that we shall find this money at the end of the day, especially since the Prime Minister has adopted the African team for the upcoming G8 summit in the beautiful Rocky Mountains of Canada. I would like him to cajole and threaten the powerful leaders of rich countries to get their act together to do something constructive to assist this "grand fléau." Canada must lead, and our Prime Minister is committed to that. Let it be done. Prime Minister Chrétien must take that \$500 million with him in his suitcase. Canadians will thank him, as they should, for the right and moral use of our money.

However, money is not enough, and aid is not enough. AIDS will not be eradicated or eliminated across Africa until the African woman is free and the machismo nonsense of too many ignorant males disappears. I had hoped to develop this issue further, but unfortunately, time does not permit. Still, it is a tremendous scourge. Women who are poor must consent or allow themselves to be raped so that they may feed their children. In that process, AIDS passes from the male to the mother and then to the child. It is a scandalous situation, and the time has come to free the women of Africa and the poverty that surrounds them.

Africa cannot continue in this way. We talk about terrorism; and we are hysterical and paranoid about it. The United States may well invade little countries of Africa that it believes — for it has no proof — favour terrorism. That is a blind and stupid view. Terrorism will grow in Africa if nothing is done by the mighty rich of the world to create some equality of living between the

Africans and us. We cannot be blind, and we cannot take refuge in our power and strength.

Honourable senators, the spin that explains our national security and interest, and the need to protect them, is not working. We must take refuge in the truth, and the truth is that Africa is dying, and Africans will not do us the favour of dying willingly.

We can spend an immense portion of our national wealth and income to protect ourselves from the evil terrorists that are said to abound. We may do that. We may find them, kill them, starve their people in the process and use our power to send their land into the Stone Age. We can do that. However, Canadians cannot escape the simple conclusion that, if we continue to follow the Americans blindly and associate our national interests with theirs, and if we do not begin now to repair the ravages caused by our inertia and lack of concern, we will be the perpetrators of our own demise, as terrorism grows and grows.

The time has come to wake up and have a love-in with Africa. It will be different from the love-in we have had in New York, even though our national interests, security and prosperity are, of course, associated more closely with New York than with Cape Town. We must wake up, honourable senators. Our country, our citizens, must wake up. Consequently, one of these days it may be possible that AIDS will be enrayé dans l'Afrique.

On motion of Senator LaPierre, for Senator Morin, debate adjourned.

UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THAT THE GOVERNMENT NOT
SUPPORT DEVELOPMENT—MOTION IN AMENDMENT—
DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:

That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) system that would run counter to the legal obligations enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost thirty years.

And on the motion in amendment of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Bacon, that the subject matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and report back to the Senate.—(Honourable Senator Stratton).

Hon. Terry Stratton: Honourable senators, I rise today to speak to the motion of the Honourable Senator Roche in respect of Canada's position on the development of a national missile defence system by the United States.

The creation of a new defence system of this nature requires the United States to withdraw from the anti-ballistic missile treaty, which it had signed with the Soviet Union in 1972, because the treaty specifically prohibits such development. The United States gave notice last week under article 15 of the 1972 ABM treaty that it intends to withdraw from the treaty in six months' time.

There are strong suggestions that the United States plans to continue with the development and deployment of a national missile defence system. President Bush has indicated that the events of September 11 provided additional proof that such additional defensive measures within the United States are required.

A parliamentary round table on the subject of national missile defence held in Ottawa last August reviewed the background, the issues associated with the possible abrogation of the treaty, with the possible reaction in other parts of the world, the alternatives, the role of Parliament in the debate, and what an appropriate Canadian response might be.

In my view, the continuance or abrogation of the treaty is a matter that clearly lies between the signatories. Canada is not a signatory and so our role is, at best, minimal.

Canada has enjoyed a period of relative peace and international stability since the signing of the treaty, and concerns about intercontinental ballistic missile warfare have diminished significantly, partly because of significant changes in international politics during the intervening years. We would certainly be loath to see any action taken that might tend to tip the balance towards uncertainty and a likelihood that such missiles would actually be used.

That being said, the American fascination and preoccupation with advanced technology makes it hard to believe that they will not actively pursue a NMD system to a final conclusion, regardless of the views of others.

• (2150)

With continuing improvements in technology, it seems only a matter of time before the United States solves the technical problems and creates an operational NMD. If we accept the notion that this process has an element of inevitability to it, it is arguable that it would be in our best interests to ensure that we are not left entirely on the sidelines. Exactly what steps we ought to take and the position that we ought to adopt are matters that should properly be the subject of a study of a committee of Parliament.

Honourable senators, a motion to refer the matter to committee is fully appropriate. However, I share the concern previously

expressed that the terms of the motion contain a predisposition or, effectively, a judgment as to what the conclusion of the committee's review ought to be. Senator Finestone's amendment was intended to provide some clarification. I would be interested to hear from others as to whether they consider the terms of the motion, as amended, to fulfil the expectation that the subject matter given over to the committee is without a major bias toward a particular finding.

Hon. Douglas Roche: Honourable senators, I will be brief. The Table has advised me that inasmuch as I have not spoken to the amendment to this motion, I am entitled to make a speech.

It is my purpose in rising to seek the consent of the Senate to withdraw the motion. Inasmuch as the consent of all senators is required for this action, I believe that I owe the Senate an explanation, which I will now give. I will not go into the substantive issues underlying this matter.

This motion was introduced in the Senate on February 8, 2001, and it occasioned debate. Senator Stratton was quite right when he said there was a point of view expressed in the terms of the motion — it was my point of view.

As the debate unfolded, it was brought to my attention that the subject matter might well go forward to committee. I gave my assent. Senator Finestone introduced an amendment to that effect.

There was then a discussion as to which committee it should be referred, the Standing Senate Committee on Foreign Affairs or the Standing Senate Committee on National Security and Defence. Then there was a discussion as to whether or not my motion, as written, would go to the committee or the subject matter underlying my motion would go to the committee. That is the point highlighted by Senator Stratton.

It is clear to me that there is a debate going on as to what actually would go forward to the committee. I do not want such a debate. I have a point of view. Other senators have a point of view. We all respect that right.

Fundamentally, I am seeking that the subject matter, per se, of the anti-ballistic missile treaty and the national missile defence system go before a committee for their own wisdom in studying it in the manner in which they wish. I will come back to that point in a moment.

If the issue was important before, which it was, the issue is even more important now. It has achieved a new magnitude of importance with the withdrawal by the United States from the anti-ballistic missile treaty.

I said that I would not go into the substantive issues tonight, and I will not. I will only say it does have profound consequences on the policies of the Government of Canada, particularly with our policies in keeping space free of weapons.

I only wish to make the point here tonight that this issue is extremely important and it is my view that it should go forward.

In order to make that happen, I must first withdraw the motion as it is currently written so that there will not be any debate on what the motion means. The motion was amended by Senator Finestone. I have secured from Senator Finestone her signed permission to withdraw the motion and her amendment to the motion. I could certainly make available to His Honour Senator Finestone's permission to proceed.

If I receive the consent of the Senate to withdraw my motion, Motion No. 3 as it stands of the Order Paper right now, I would appreciate that. However, I signal now that once I achieve the withdrawal, it will be my intention to give notice that, at an appropriate time, I will move that the subject matter of the anti-ballistic missile treaty and the proposed national missile defence system be referred to the Standing Senate Committee on National Security and Defence for study and report back to the Senate no later than May 31, 2002.

I will explain the date May 31 as follows. Six months' notice is required to achieve withdrawal from the ABM treaty. That notice was given by the Bush administration about December 13, meaning that by the middle of June it will come into effect. I thought it would be appropriate if the standing Senate committee would examine this issue in its wisdom in order to give a report to the Senate in time for members of the Senate to apprise themselves of the report of the committee and then express a viewpoint on what they think should be done.

I hope the explanation is clear. I hope it is clear that I am seeking to withdraw the present motion in order to clear the floor from any interpretation of my particular position on the subject matter. Once I achieve the withdrawal, I will then, at the appropriate time, signal to His Honour that it will be my intention to give notice that I will move a new motion in the terms of which I have just read.

Hon. Bill Rompkey: I move the adjournment of the date.

Hon. Nicholas W. Taylor: I have a question, honourable senators.

The Hon. the Speaker: Will Senator Roche accept a question?

Senator Roche: Of course.

Senator Taylor: What is bothering me is that Senator Roche has been stampeded by Senator Stratton's worry about an expressed opinion. It is very difficult to bring forward any motion that does not express an opinion, and certainly one in which the able members opposite cannot pick holes.

I want to see this thing go ahead. I am willing to go along with everything the honourable senator has said, stampede or not. What bothers me is when the honourable senator says "at a

suitable time." I would love it if the honourable senator would say that that is tomorrow.

Senator Roche: Honourable senators, I am prepared to move ahead on the motion tonight. If honourable senators are so disposed, I would be happy to do that. If there is no agreement, then I will do it at an appropriate time. I will signal to His Honour that I will give the notice.

The honourable senator opposite says that a motion cannot be shorn of opinion. I have done my best to put language forward that is devoid of an opinion. Here is the language: I will move that the subject matter of the anti-ballistic missile treaty and the proposed national missile defence system be referred to the Standing Senate Committee on National Security and Defence for study and report back to the Senate no later than May 31, 2002.

• (2200)

Hon. Tommy Banks: I understand what the honourable senator is getting at. Would the honourable senator consider consulting with the Chair of the Standing Senate Committee on National Security and Defence about the likelihood of being able to meet the date deadline that is proposed in the motion?

Given the present schedule of that committee, the work that it has undertaken to do, and the nature of the question asked on the other point, is it realistic to ask that or any committee to report back to the Senate on such a question in May, given that the Senate will resume sitting in February? If the honourable senator thinks that is enough time, then I would only ask that he consider the first point. However, I do have some hesitation about the date.

Senator Roche: On the first point, I did consult with the Chairman of the Standing Senate Committee on National Security and Defence on a previous occasion. He indicated that the committee would be prepared to follow the direction of the Senate, whenever such direction is received by the committee.

With respect to the honourable senator's other question on the matter of the date and whether the time frame is too tight, if it is, then we could ask for an amendment at an appropriate stage. However, the date that is there is not my choice. It is the date that falls within the six months that is provided in the ABM Treaty for withdrawal. In other words, the United States will withdraw from the ABM Treaty on or about June 13, 2002. If the Senate is to study this matter to determine in what manner it can give advice to the Government of Canada, then we have no choice but to conduct our work within the confines of the dates as prescribed in the treaty.

The Hon. the Speaker: Honourable senators, under rule 30, Senator Roche has asked for leave to withdraw his motion. I take it from Senator Rompkey's motion to adjourn the debate that there is at least one dissenting voice. That is why I did not put the question regarding leave. Accordingly, I am now prepared to entertain Senator Rompkey's motion.

It is moved by the Honourable Senator Rompkey, seconded by the Honourable Senator Cook, that further debate on this motion be adjourned to the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Is there a dissenting voice?

Senator Taylor: Yes, there is. On division.

On motion of Senator Rompkey, debate adjourned, on division.

NOMINATION OF HONORARY CITIZENS

INQUIRY—ORDER STANDS

On the Order:

Resuming debate on the inquiry of the Honourable Senator Prud'homme, P.C., calling the attention of the Senate to the way in which, in the future, honorary Canadian citizens should be named and national days of remembrance proclaimed for individuals or events.—(*Honourable Senator Banks*).

Hon. Marcel Prud'homme: Honourable senators, I should like to ask a question of information.

The Hon. the Speaker: Honourable senators, it is not uncommon for such questions to be asked. However, this being a debatable item, leave is required.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Prud'homme: Would Senator Banks kindly give us an indication of when and if he will participate in debating this matter, as it has now appeared on the Notice Paper for 10 days.

Hon. Tommy Banks: Honourable senators, I intend to speak within the first few days upon the resumption of our business in February.

Order stands.

THE SENATE

MOTION TO ESTABLISH SPECIAL COMMITTEE ON SUPPORT FOR LA RELÈVE IN THE ARTS—CORRECTION TO TRANSLATION

On Motion No. 106:

That a special committee of the Senate be appointed to examine the important issue of providing support for the next generation (*La Relève*) in the Arts;

That the special committee consist of five Senators, three of whom shall constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers, briefs and evidence as may be ordered by the committee;

That the committee have power to authorize television and radio broadcasting or dissemination through the electronic media, as it deems appropriate, of any or all of its proceedings and the information it possesses;

That the committee have power to sit during adjournments of the Senate pursuant to rule 95(2) of the *Rules of the Senate*; and

That the committee present its final report no later than two years after it is appointed.

The Hon. the Speaker: Honourable senators, I have been informed that there is an issue related to the text of this motion on the Notice Paper, specifically the translation of the French words "*La Relève*" into English. I understand that there is an agreement that the English translation is "the next generation."

Is it agreed, honourable senators, that the English version of the motion include the words "the next generation" in place of "*La Relève*"?

Hon. Senators: Agreed.

The Senate adjourned until Tuesday, December 18, 2001, at 9 a.m.

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OFFICIAL REPORT
(HANSARD)

Tuesday, December 18, 2001

THE HONOURABLE DAN HAYS
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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THE SENATE

Tuesday, December 18, 2001

The Senate met at 9:00 a.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

THE SENATE

DISASSOCIATION FROM COMMENTS BY SENATOR
ON PRIME MINISTERS OF ISRAEL

Hon. Sharon Carstairs (Leader of the Government):

Honourable senators, on Friday, December 14, 2001, Senator Prud'homme raised a question with respect to the establishment of a Palestinian state. He also asked if the Canadian government would use its good offices to bring an end to the violence in the Middle East. I agreed with Senator Prud'homme that the Government of Canada believes in a Palestinian state and that Canada would use its good offices to do what it can to achieve peace.

However, it has just come to my attention that Senator Prud'homme also made a statement in his preamble with which I cannot agree. Senator Prud'homme, in his preamble, said the following:

Now that we see the butcher of Lebanon, who is now Prime Minister, imitating two other ex-prime minister butchers, Menachem Begin and Moshe Sharett...

Honourable senators, I cannot agree with this characterization of these three men, and I totally disassociate myself and the Government of Canada from his remarks.

Senator Prud'homme: He is a butcher anyway.

Senator Finestone: No, he is not. It was the Christian Lebanese.

NIGHT OF ONE THOUSAND DINNERS

FUNDRAISER TO ELIMINATE LAND MINES

Hon. Sheila Finestone: Honourable senators, as a last act here in the Senate, and as a special gift today, which I had not expected, I should like to report a land mine estimate that was given to the Prime Minister last night at the reception for the ambassadors. As I leave, I report that the initiative for the Night of One Thousand Dinners has had the following estimated results. On that one night, 25,000 people attended from 31 countries across the world. The money raised to date totals \$2 million. We should be very proud of the role that we in the Senate played in hosting an evening that added to those results. For a first-time effort, Canadians can be extremely proud of this undertaking.

I can tell honourable senators, not immodestly, that when I went to dinner with Colin Powell, his remarks were a reflection of the real support the United States has and the respect with which they feel Canada has led the world in removing those incredibly horrible land mines, which do not protect the soldiers, do not protect the people, which destroy the countryside and destroy people's lives.

That initiative was started, by the way, in 1984 by Mr. Chrétien and André Ouellet, who was the critic for Foreign Affairs, was carried on by Lloyd Axworthy and is now effectively and efficiently carried on by John Manley. I was honoured and privileged to be an adviser in this field.

I forgot to mention the President of the Land Mines Foundation who founded this humanitarian initiative, Mr. Frank O'Dea. He deserves all the credit in this regard.

THE SENATE

TRIBUTE TO STAFF

Hon. Colin Kenny: Honourable senators, I wish to take a moment, as this may be our last day here, to comment on the extraordinary work that the staff has done to keep this place operating. The whole gang was here organizing things early this morning. If you look at your desk, you will see that you have a new Order Paper and Journals. Our pages were here last night working late, and they were opening the place this morning as well.

Hon. Senators: Hear, hear!

Senator Kenny: I think they understand, after hearing that ovation, how we all feel about them. I just wanted to mention that we are lucky to have such good people here who so regularly work on our behalf.

[Translation]

OVERVIEW OF LEGISLATION

Hon. Pierre Claude Nolin: Honourable senators, what a coincidence to rise after Senator Kenny, who has taken the opportunity to thank the Senate staff. I, too, wish to extend my congratulations to them.

Now, we are shortly going to adjourn for the holidays. Before we start patting ourselves on the back, telling ourselves how good we are, how well we have done our jobs, I would like us to reflect together on our work as senators.

I would like to point out for those who do not have the habit of reading the *Journals of the Senate*, that this document gives an overview of legislation once a week, under the heading "Progress of Legislation."

Honourable senators, I will briefly summarize for you our work since the end of January, as far as government bills, both Senate and House of Commons bills, are concerned. In all, 37 bills were examined. Of those 37, 12 originated in the Senate and the rest in the House of Commons. With regard to six of the Senate bills, we adopted 37 amendments, whereas two amendments were made to two of the House of Commons bills.

Before the honourable senators start saying that they are doing a good job for Canadians, I felt I ought to help them in their reflection by suggesting that they look at the overview of legislation from time to time. Then they will see that we could be doing even more than we claim to be capable of doing.

• (0910)

COMMENTS REGARDING PRIME MINISTERS OF ISRAEL

Hon. Marcel Prud'homme: Honourable senators, in response to Senator Carstairs' rather surprising remarks, I simply related history.

I do not know what you call a man who kills women and children and who, in a massacre in the village of Derr Yassin, pursues all of the villagers.

I do not know what you call a man who, between 1945 and 1947, blew up the King David Hotel, which was full of young British soldiers. Yet these two men became Prime Ministers. One was called Yitzhak Shamir and the other, Menachem Begin. They were welcomed, acclaimed and received with open arms by the authorities.

The term "butcher of Lebanon" is not mine, it is the interpretation ascribed to him. He was called the "butcher" during his invasion of Lebanon, where there were 17,000 victims.

It is unfortunate that you will not be watching Radio-Canada this Friday to see just what our "good Government of Canada" does with Lebanese torturers, who are responsible for human rights in Lebanon and who tortured their own Lebanese colleagues, fled to Israel and have just been brought over by the government. What are they doing in Montreal, Toronto, Hamilton and Ottawa?

[English]

I encourage all honourable senators to watch on Friday night. Unfortunately, it is next Friday.

[Translation]

I wanted to end the season on a note of praise and I will do so. I regret this aside by Senator Carstairs.

[English]

I regret that she sidetracked me. I came here to pay tribute to one of our colleagues, a top editorialist in her own time, for her courage. Of course it will not be seen in the large newspapers yet, but it can be seen in *Le Devoir*. People do not usually like

[Senator Nolin]

Le Devoir, but if honourable senators read *Le Devoir* of yesterday, they will see all the details there.

I want to tip my hat to Senator Fraser, the former editor-in-chief, along with two of her colleagues, also former editors-in-chief, for having denounced "la mainmise de ce jeune arrogant" David Asper, who is now dominating most of the press in Canada. If any senators are interested, they can read them all, from the *Halifax Daily News*, the *St. John's Evening Telegram*, the *Charlottetown Guardian*, the *Montreal Gazette*, the *Ottawa Citizen*, the *Windsor Star*, page after page.

The Hon. the Speaker: I am sorry to advise Honourable Senator Prud'homme that his time for Senators' Statements has expired.

Senator Prud'homme: I want to congratulate Senator Fraser for having stood up, written her name and denounced this "mainmise."

THE PRESS

EDITORIALS BY NEWSPAPER OWNERS

Hon. Laurier L. LaPierre: Honourable senators, I will finish the thought of Senator Prud'homme on this matter. It is a sad day for journalism and the freedom of information in Canada when an owner can dictate editorials in the press. Not only does he dictate them, but at the same time insists that editorial writers who work for the *Ottawa Citizen* must follow the national line dictated from Winnipeg and the Asper household. I find this despicable and it is the price that we must pay for the concentration of ownership of the means of information. The Senate must attach importance to this issue and invite Keith Davey to look at the whole problem of the concentration of ownership or this abuse of power will continue. We must wake up to this issue and do the work that Senator Nolin wishes us to do in the new year.

Senator Cools: Bring back Conrad Black.

[Translation]

QUESTION PERIOD

THE SENATE

OVERVIEW OF LEGISLATION

Hon. Pierre Claude Nolin: Honourable senators, my question is for the Leader of the Government in the Senate. I have given an overview of what we have accomplished in the past year. Does the government intend to prevent the Senate from doing its job in the coming year?

An examination of the statistics indicates that two amendments were made to two of the 29 bills received from the House of Commons. Thus, 27 bills were passed without our being able to amend them, either in committee or in the House. Does the government intend to continue this policy?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is very clear that the Senate does excellent work in the review of its bills. It makes considered and well-thought observations to many of them. The Senate acts as a monitor for good legislation. When we receive legislation, as indicated by 12 bills that received their first go-round in this chamber, then, of course, the Senate does what the House of Commons does, which is take a much more activist approach.

[Translation]

Senator Nolin: Honourable senators, 11 bills have been considered by the Senate, and in four of them, we moved and adopted 35 amendments.

Bill S-11, which reviewed the Canada Business Corporations Act, was considered by the Standing Senate Committee on Banking, Trade and Commerce, which moved and adopted 17 amendments, one of these at third reading.

After that, the National Finance Committee examined Bill S-23, to amend the Customs Act and to make related amendments to other Acts, and adopted 11 amendments, two of these at third reading in the Senate. In all, with these two bills, 31 of 35 amendments were adopted.

Does the minister really believe in the efficacy of this Chamber?

[English]

Senator Carstairs: Honourable senators, we must bear in mind that the bill, when it moves through the House of Commons, is also subject to an amendment process. When they receive the bill in the first instance, they frequently introduce a number of amendments, which we might well have introduced on this side had we received it first-hand.

● (0920)

When we receive a bill in the first instance, we provide the amendments, which they, in turn, might have provided if they had received the bill in the first instance.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like us to start, under Government Business, with Item No. 2, third reading of Bill C-45.

[English]

APPROPRIATION BILL NO. 3, 2001-02

THIRD READING—MOTION IN AMENDMENT NEGATED—
DEBATE SUSPENDED

Hon. Isobel Finnerty moved the third reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.—(Pursuant to the order adopted on December 17, 2001, all questions will be put to dispose of the bill at 12:30 p.m.)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to draw the attention of the house to the situation that we face in respect of Bill C-45. The record is clear that an error has been made, and it is our view that it should be corrected.

An Hon. Senator: It is not important.

Senator Kinsella: Unless obvious errors are corrected, it will lead many Canadians to perceive Parliament as irrelevant. When faced with a claim that two plus two equals five and that error is not corrected, then what is the purpose of Parliament?

On two occasions, it was pointed out that we understand this to be a supply bill and that we would act collaboratively to see that the supply bill is passed so that the government has the money to conduct its work.

Initially, we proposed that we would go into Committee of the Whole to have the minister and the departmental officials appear before the house to correct the error. We also attempted to propose that the \$50 million, which ought not be there, be subtracted. None of the proposals received a favourable response from the other side; rather, they wanted to perpetuate the error.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I move, seconded by the Honourable Senator Forrestall:

That Bill C-45 be not now read a third time, but that it be referred to the Senate Committee of the Whole.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

Since two senators have not risen, I declare the motion in amendment defeated, on division.

We now return to third reading debate of Bill C-45.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I believe Senator Kinsella adequately outlined the problem we brought forth earlier. Unfortunately, honourable senators will be called upon to vote on a supply bill that is flawed. It is an abdication of our responsibilities not to amend the bill, which we have a right to do. We would not be amending supply as such, but we would be making a correction to the bill. We do not have the right to increase supply, and the jury is still out on whether we can reduce supply. Some authorities say that we can and a few say that we cannot.

Our objective in respect of Bill C-45 was to make a correction to the supply bill. Well, this has been refused.

Honourable senators, when the vote is called, I will say "on division." There is an additional item in Bill C-45 that should trouble all of us, among other elements — the reimbursement to Treasury Board of an advance of \$152 million, which was announced by the Minister of Transport to compensate aircraft carriers and those affected by the closing of airports in Canada for four or five days after the tragic events of September 11. I do not think anyone questions that compensation should be given. However, what troubles me is that the minister was able to announce unilaterally through a press release, without any debate in Parliament, that \$152 million would be allocated to applicants whose eligibility for the amounts available are determined by him and his officials.

Contrast that with what happened in the United States when they agreed to what they call a bailout package. That was agreed to only after intense discussions between both major parties in Congress and the Bush administration. They came to an understanding and passed a supply bill in Congress, which was signed by the President.

Contrast that procedure, which is a responsible approach to the use of public funds, to the procedure in Canada, where a minister can invoke a section in an act such that he is then able to convince Treasury Board that he has the authority to obtain an advance of \$152 million for a program that Parliament never had an opportunity to debate, much less approve. The only time it can be debated is when the money has to be reimbursed to Treasury Board through the Estimates and then through the supply bill.

Follow the debate in the House of Commons on this issue. Honourable senators will not find it because there was no debate. There was an evening when the House of Commons debated the problems related to the airline industry when there was only casual reference to the bailout package, which the Minister had announced outside the House. It should trouble us that, more and more, government ministers are finding ways, through their

interpretation of the acts for which they are responsible, to convince Treasury Board to make more and more advances for programs and policies that are never submitted to Parliament.

Honourable senators, this issue should preoccupy the House of Commons because, after all, their main responsibility is to maintain control over the purse. Once that is lost, authority is also lost over everything. It is as simple as that — Parliament is losing that authority.

In the Senate, we have limited authority over public funds, which is quite right, because the ultimate power over the purse belongs to the elected representatives. That is why I will not vote against a supply bill, but I will certainly express my distress by saying "on division," which is a form of protest but not recorded as such.

I raise this matter, honourable senators, to point out a growing trend that remains unchecked. Not only are there errors in the supply bill, which should be corrected at this time, but the President of the Treasury Board has told us that it will be corrected in the next Supplementary Estimates. The implication clearly is that senators dare not interfere and that Treasury Board should be left alone: "How dare you put your nose into my bill."

If they are to include the correction in the next Supplementary Estimates, they should remove it from Bill C-45. However, they apparently cannot do that because the bill is printed and the House of Commons is in recess: "It is only a supply bill; it is only taxpayers' money; it is only funds over which Parliament should have direct authority." Well, it is only funds over which Parliament's authority is slowly eroding.

• (0930)

I wanted to speak to another issue raised by the Auditor General. It is another example of Parliament losing its authority over public funds. Over the last eight years, nearly \$10 billion has been moved out from the direct control of Parliament to non-accountable, stand-alone foundations and agencies. I include \$2 billion announced in the last budget, which will go into a strategic infrastructure foundation. I exclude an amount of \$500 million for an Africa fund because I am not sure whether that will be a separate agency or a fund within the department — plus \$1.25 billion to an innovation fund, which is in the Supplementary Estimates. The Auditor General has no oversight on those funds, which are taxpayers' funds.

I am not criticizing the objective for which these funds are being set aside. My objection is that they are being put into private, non-profit corporations that are not accountable to Parliament, except for providing an annual report, which can say what one wants it to say. Parliament's control over these funds is limited to such corporations having to hire an approved auditor. That is not the Auditor General. The Auditor General does more than say, "Two and two makes four." The Auditor General makes sure that the monies have been properly spent in achieving the purpose for which they were allocated.

The government has found a way to escape the Auditor General's supervision by moving a massive amount of funds out of Parliament's authority into these private corporations, \$10 billion in a period of eight years. Just think of the interest on that amount, which should be in the current budget because it belongs to the Canadian taxpayers. As the Auditor General has pointed out, these foundations do not need a massive one-time infusion of funds.

The government has decided that, because of the huge surpluses in the past, rather than pay off the debt it was more politically acceptable to create programs such as the Millennium Fund and the sustainable development strategy. They were all for good purposes. However, removing the funds, policies and programs out of Parliament's reach means that, when there comes a change of government, it will be difficult for the new government to alter what is already in place.

The point of my repeated intervention is that parliamentarians realize that, by approving such expenditures without even a minimum of argument, they are sanctioning ministers convincing Treasury Board that their authority is so wide that they can easily access temporary advances. By allowing that to happen, we are abdicating our responsibilities — more in the House of Commons than here. However, somebody must speak up against this trend which, if it continues, will confirm that we are all becoming terribly irrelevant.

[Translation]

Hon. Roch Bolduc: Honourable senators, in the matter of highway reconstruction, we are going to find ourselves with a government-appointed board, which will decide what agreements are to be signed with the Government of Quebec and for which highways.

I recall the Duplessis years. That was the era of patronage, but Mr. Duplessis had been elected by the people. He was not embarrassed to be engaged in it. Today, we are going far beyond that: patronage done by public servants. This is disastrous!

[English]

Hon. Lowell Murray: Honourable senators, with regard to the third matter raised by the Leader of the Opposition, that is, the foundations that seem to be springing up at great expense to the public, I want to assure him and the Senate that the Standing Senate Committee on National Finance has already undertaken to look into this whole question in considerable detail after the Christmas break. We are now having some research done on the matter, and I hope that my honourable friend will come and participate with us as the committee looks into the issue.

Turning to the second point the Leader of the Opposition raised concerning the amount of \$160 million that the Minister of Transport found to provide financial assistance to commercial airlines for losses incurred in the days following the terrorist attacks of September 11. When the committee met on the

Supplementary Estimates, we put questions on this matter to the Treasury Board officials. As usual, they replied as fully as they could and offered to provide further information later.

Yesterday, I received a letter dated December 13 signed by the President of the Treasury Board, Madam Robillard. I instructed the clerk yesterday to circulate copies of the letter to the committee. My friend is an ex-officio member, so he will soon receive the letter. Just for the record, Madam Robillard gives the chronology, which began on October 1 when Minister Collenette presented this proposal for a program of up to \$160 million to an ad hoc committee of cabinet. The committee recommended the approval of this proposal to the full cabinet, which approved it on October 2. She then cites the relevant section of the Aeronautics Act which provides, in the view of the government, the basis of the authority. She states:

...that provides the Minister of Transport with the authority to provide financial assistance to air carriers is Section 4.2(a) and (l) ... the sections state that:

The Minister is responsible for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics and, in the discharge of those responsibilities, the Minister may:

(a) promote aeronautics by such means as the Minister considers appropriate; ...

(l) provide financial and other assistance to persons, governments and organizations in relation to matters pertaining to aeronautics.

She says that, based on this authority and a legal opinion as to its pertinence, the Treasury Board authorized the departmental request for the establishment of a class grant program to provide assistance to Canadian airlines, especially air operators for losses incurred due to the temporary closure of Canadian air space.

I wanted to place that on the record, honourable senators, not because I consider the issue closed. On the contrary, this is a matter that the committee will want to look into after Christmas. In the meantime, I may cause some research to be done into those particular provisions of the Aeronautics Act. It would be interesting to know the intent of the government in power and Parliament when those sections of the act were debated and passed.

It would also be interesting to see whether there is any precedent for the expenditure of a sum of this order of magnitude — \$160 million — as a bail-out to airlines using the authority of that section of the Aeronautics Act. We will find out whether there is any such precedent and the authority is solid, or whether they are just acting on creative legal advice.

In any case, I thought I would put the explanation on the record, with my comments and the assurance that the committee will be looking into the matter after the Christmas break.

• (0940)

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Finnerty, seconded by the Honourable Senator Taylor, that the bill be read the third time now.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators who are in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: There will be a recorded vote. The recorded vote, pursuant to the order of yesterday, will take place at 12:30 p.m.

We have a short time to proceed with other business before I rise at 9:45 for the division bells to ring for the deferred vote on Bill C-7.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, there is an order of the house that we will dispose of Bill C-6, Bill C-7 and Bill C-45 at 12:30. Therefore, if a vote is required, we could have that vote at 12:30, preceded by a 15-minute bell. If other votes are called, we could do it all at the same time.

I thought that was the understanding. If we could vote right now, I would have no problems with doing so.

Senator Kinsella: Honourable senators, I will add more specificity. Under rule 38, all votes will be held on those items "no later than" the specified time. Therefore, since the motion is before us and if the two whips agree to a five-minute bell, we could dispose of the matter in five minutes.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I have a suggestion. As we have a vote at ten o'clock, we would have a five-minute bell for this vote and a 15-minute bell for the 10 o'clock vote. At ten o'clock, we would vote on both the Bill C-7 motion and the Bill C-45 motion. We could dispose of both of them.

The Hon. the Speaker: Honourable senators, is it agreed then that we will vote on Bill C-7 as ordered at ten o'clock today, and, as well, immediately thereafter, vote on Bill C-45.

Honourable senators, a 15-minute bell is required. We are so close to 9:45, that with agreement, I will ask for the division bells to ring now for a vote at ten o'clock, first on Bill C-7, all matters, and second on Bill C-45, all matters.

Senator Carstairs: Honourable senators, the vote on Bill C-7 would not be on all matters, only on one of the amendments. We would then vote on all matters on Bill C-45.

The Hon. the Speaker: I thank the Leader of the Government for that clarification. The vote will be on the amendment to Bill C-7, and all matters on Bill C-45. The vote will be at ten o'clock.

In that we are so close to 9:45 and a 15-minute bell is required, with your agreement, I will ask that the senators will be called in for the vote now.

Hon. Senators: Agreed.

The Hon. the Speaker: Call in the senators.

Debate suspended.

• (1000)

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

On the motion in amendment of the Honourable Senator Andreychuk, seconded by the Honourable Senator Nolin, that Bill C-7 be amended, in clause 2,

(a) on page 2, by adding, immediately before line 3, the following:

"2.(1) An object of this Act is for the law of Canada to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and

(b) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Lynch-Staunton
Atkins	Meighen
Beaudoin	Murray
Bolduc	Nolin
Comeau	Oliver
Di Nino	Prud'homme
Doody	Rivest
Forrestall	Roche
Johnson	Spivak
Keon	Stratton
Kinsella	Tkachuk—23
LeBreton	

NAYS
THE HONOURABLE SENATORS

Austin	Kenny
Banks	Kirby
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Morin
Corbin	Phalen
Cordy	Poulin
Day	Poy
De Bané	Robichaud
Fairbairn	Rompkey
Finestone	Setlakwe
Finnerty	Sibbesten
Fraser	Sparrow
Furey	Stollery
Gauthier	Taylor
Graham	Tunney
Hubley	Watt
Jaffer	Wiebe—44

ABSTENTIONS
THE HONOURABLE SENATORS

Hervieux-Payette—1

APPROPRIATION BILL NO. 3, 2001-02

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator

Taylor, for the third reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

The Hon. the Speaker: Honourable senators, we will now vote on Bill C-45.

Motion agreed to and bill read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Austin	Joyal
Bacon	Kenny
Banks	Kirby
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Moore
Corbin	Morin
Cordy	Phalen
Day	Poulin
De Bané	Poy
Fairbairn	Robichaud
Finestone	Roche
Finnerty	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Sparrow
Grafstein	Stollery
Graham	Taylor
Hervieux-Payette	Tunney
Hubley	Watt
Jaffer	Wiebe—50

NAYS
THE HONOURABLE SENATORS

Comeau	Nolin
Di Nino	Oliver
LeBreton	Tkachuk—6

ABSTENTIONS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Doody	Prud'homme
Forrestall	Rivest
Johnson	Spivak
Keon	Stratton—16

• (1010)

[Translation]

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTIONS IN AMENDMENT—VOTES DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, An Act in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

Hon. Gérard-A. Beaudoin: Honourable senators, I am convinced subclauses 76(1)(b) and 76(1)(c) of Bill C-7 must be amended.

If Bill C-7 is passed without this amendment, a young offender could serve his or her sentence in a provincial correctional facility for adults. This undermines the youth sentencing regime. The Supreme Court has on many occasions recognized the need for a separate justice system for adolescents.

There is no doubt that one of the objectives of the Youth Criminal Justice Act must be to protect society. Need it be the prime objective? The needs of the adolescent would be made secondary if that were the case. The lack of any balance between the needs of the adolescent and the protection of society will gradually eliminate any difference between the youth sentencing regime and that of adults. And, as I have said, the Supreme Court has recognized the need for a separate system of justice for young people.

[English]

MOTION IN AMENDMENT

Hon. Gérard-A. Beaudoin: I therefore move, seconded by the Honourable Senator Bolduc:

That Bill C-7 be not now read a third time but that it be amended, in clause 76,

(a) on page 79, by replacing lines 16 to 19 with the following:

“(b) a youth custody section of a provincial correctional facility for adults, in which young persons are kept separate and apart from any adult who is detained or held in custody; or

(c) if the sentence is for two years or more, a youth custody section of a penitentiary, in which young persons are kept separate and apart from any adult who is detained or held in custody.”;

(b) on page 80, by replacing lines 18 to 21 with the following:

“(b) a youth custody section of a provincial correctional facility for adults, in which young

persons are kept separate and apart from any adult who is detained or held in custody; or

(c) if the sentence is for two years or more, a youth custody section of a penitentiary, in which young persons are kept separate and apart from any adult who is detained or held in custody.”.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion of the motion in amendment please say “yea”?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say “nay”?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the “nays” have it.

And two honourable senators having risen:

The Hon. the Speaker: Pursuant to order of the house, the division will take place at 12:30 p.m.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, since it was agreed to vote on the preceding item before 12:30 p.m., I propose that the vote be held now. I leave it to the whip to decide how long the bells will sound.

[English]

The Hon. the Speaker: Honourable senators, I missed the agreement. My scroll indicates that, pursuant to the order adopted on December 17, all questions will be put to dispose of the bill at 12:30 p.m. I now understand that it should read “no later than.”

Hon. Terry Stratton: I suggest that we have a 15-minute bell now.

Hon. Laurier L. LaPierre: Honourable senators, could we not change the Order Paper to read “by 12:30” as opposed to “at 12:30”? I get all confused.

The Hon. the Speaker: It is clearly understood by everyone but Senator LaPierre and me that the vote can be taken at any time.

Accordingly, we now have an agreement between the whips to have a 15-minute bell. Therefore, we will vote at 10:35 a.m.

Call in the senators.

Motion in amendment negated on the following division:

[Translation]

• (1030)

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Prud'homme
Forrestall	Rivest
Johnson	Roche
Kelleher	Spivak
Keon	Stratton—24

NAYS
THE HONOURABLE SENATORS

Austin	Kirby
Banks	LaPierre
Bryden	Léger
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Milne
Cook	Morin
Cools	Phalen
Corbin	Poulin
Cordy	Poy
Day	Robichaud
De Bané	Rompkey
Fairbairn	Setlakwe
Finnerty	Sibbeston
Fraser	Sparrow
Furey	Stollery
Gauthier	Taylor
Graham	Tunney
Hubley	Watt
Jaffer	Wiebe—43
Kenny	

ABSTENTIONS
THE HONOURABLE SENATORS

Finestone
Hervieux-Payette—2

• (1040)

The Hon. the Speaker: Honourable senators, we will resume consideration of the main motion. Is the house ready for the question?

Hon. Marcel Prud'homme: Honourable senators, those who observed the way this morning's vote went must have noted the considerable hesitations of the senators for Quebec. Few of them will be voting in favour of the bill; some will be voting against it, while others will, for their own reasons, not be present for the vote.

I have always felt that the Senate was representative of the regions. The argument in favour of a federation in which the opinions of all must be taken into consideration has been well stated and well defended. I have taken the well-thought-out opinions of Senators Watt and Moor into account when voting on the amendments they proposed. I have listened attentively to their concerns about the First Nations. For them, this was very important. I was very much aware of their concerns, as I continue to be, and will be in future. The definition of a good senator is one who understands the role of the Senate, and who listens to minorities, whatever they are, and is prepared to defend them.

I must therefore — I repeat once again — regret the vote we will be taking on Bill C-7. I will regret it even more than the one we will be taking later on Bill C-36, which I will be voting against. If I had to choose to vote in favour of one of these, it would be Bill C-36. Bill C-7 does not in any way reflect the objectives of Confederation. Within each of the regions of Canada, we can be in favour or not, but this does not in any way reflect the sensitivity we must have for our fellow citizens in the First Nations community or in the multicultural community — although that is a term I detest. It must not in any way influence our representation of the regions.

As Bill C-7 has been considered at length, I have serious doubts about the role of the Senate. Canadian senators do not often have the opportunity to examine in depth what the House of Commons has often refused to examine. One of the most important roles of the Senate is to have its ear to the ground in the regions, to take initiatives in matters of human rights — as Senator Finestone has done — to be attuned to the most sensitive issues of interest to Canadians. I am sure this bill will be challenged in the courts. This morning, we missed a unique opportunity to play our role as senators, to be attentive to concerns, subtleties and differences. We do not all react the same way to certain social problems. I have always thought that, in a federation, we had to have the knowledge and sensitivity to understand so we could set the best possible example for the rest of humanity.

Honourable senators, what is the use of travelling the world over and singing the praises of Canada, as I do in various countries and as Senator Finestone has done at the Inter-Parliamentary Union? Wherever we go, we are asked about this country, which manages to keep people of such varied interests together. We are asked how we manage it. We achieve it by being sensitive every day. We are asked what keeps us going in this country. A country is created every day, it can be destroyed just as quickly, however.

Bill C-7 gave us a unique opportunity to demonstrate the sensitivity of senators and their understanding of the federal system. Why are some of us federalists, when the sweet music of other sirens would draw us to other levels of politics beside federal politics? It is because we believe that, for our fundamental liberties, two levels of government, a provincial one and a federal one, are preferable.

So important to us is respect for the individual and individual differences that, not only do we want two levels of government, we want two chambers, to ensure greater protection and security at the federal level. This is how I describe the role of the Senate to students and professors at colleges and universities, when I am invited.

The first question asked is the following: What does the Senate do? We explain that we have the opportunity to correct legislation. We are the chamber of second thought. We take our time and do not let the institution push us.

And what happens? The bells sound, and we become a weak facsimile of what I saw for 30 years in the Commons, where time and again I saw MPs with strong opinions crushed as soon as the bells sounded calling them to a vote. We were allowed to amuse ourselves by expressing our opinions, and then, when the debate ended, it was time to vote.

• (1050)

This is why I will not move any further amendments on Bill C-7, for which our support is being sought. I will vote against the bill. When the bill goes back to the other place, I hope they will have time to think. Who knows, perhaps a cabinet shuffle is in the offing. Everyone wants to become a minister in the other place. We will probably have a new minister of Justice, who will make appropriate changes to this bill, so as to reflect the views of the federation, of all the regions in this bill, as opposed to those of a single region, which happens to be the region the current minister comes from.

Senator LaPierre: Honourable senators, after I arrived here and looked at Bill C-7, I went to see the members of Parliament from Quebec, who had spent almost 100 hours considering the bill in caucus. After reviewing and discussing this legislation, and despite being subjected to extraordinary pressure, they had come to the conclusion that they could support this bill, with some amendments.

My seat is not at stake. These people were prepared to put their job on the line to pass a bill which, according to their conscience, satisfies Quebecers and Canadians. And they did. I am satisfied with that, honourable senators, but what strikes me is that Senator Prud'homme is telling us that we have a duty to represent the regions as well as the whole country. If we look at all the issues through the keyhole of our regions, do you not see that this could be extremely harmful to the Commonwealth and to the general public? Would it not be possible to think that if

[Senator Prud'homme]

those whose seats will be on the line at the next general election accepted this bill, Senator Prud'homme has no right to impugn motives? These people voted knowledgeably and with their conscience. Honourable senators, I accept that, and it seems to me that Senator Prud'homme, who has a big heart, could do the same.

Senator Prud'homme: Honourable senators, Senator LaPierre misunderstood my comments. To begin with, senators must first and foremost represent their regions. That was the object of the debate.

Furthermore, Senator LaPierre says that he consulted members of Parliament from Quebec, and I give him credit for doing so. However, the fact is that a majority of the members from Quebec in the other chamber voted against this bill.

Senator LaPierre: It was the Bloc Québécois.

Senator Prud'homme: Either one accepts democracy for what it has given us, or one does not. Senator LaPierre is sloughing off half of the members of Parliament from Quebec who do not share your opinions.

It is true that, in my great generosity, when I had to choose between personal interests and general interests during the debate on the War Measures Act, I did my duty, although unwillingly. I helped put 450 of my fellow Quebecers behind bars, but I did so believing it was for the good of Canada, generally.

Senator LaPierre is right in saying that there comes a time when we have to make a decision between the good of our region and the overall good. It was not just half the members from Quebec in the other place who voted against it. I do not wish to stir things up, but I note that Senator LaPierre is completely wrong in stating that more than half of the senators from Quebec...

Senator LaPierre: That is not what I said!

Senator Prud'homme: No, I am saying it. I am a terrible one for keeping records. I can tell you, honourable senators, that there is a tiny minority of senators from Quebec here, although there are many of us here this morning. I have seen some leave the chamber. They are therefore not present at the moment, while others have had what I cannot call the courage to remain seated and to vote against the bill or to abstain. That is the response I wanted to give to Senator LaPierre. There is no contradiction.

[English]

The Hon. the Speaker: Honourable Senator Prud'homme, I regret to advise that your time has expired.

Senator Prud'homme: And so has my answer.

The Hon. the Speaker: Does the Honourable Senator Setlakwe wish to speak?

[Translation]

Hon. Raymond C. Setlakwe: Honourable senators, with what I have just heard, I feel compelled to rise and say that I have given this bill considerable thought. I have concluded that, with the very appropriate amendments brought by the other chamber, there is one underlying principle I cannot ignore. In Canada, criminal law cannot be understood two ways. It cannot be understood one way in one part of a country and in another way, in basic terms, in another part. This is why I am voting in support of the bill.

Another underlying issue concerns me as well. I have noticed that, in Quebec, there are very few young Native people in prison, unlike in the rest of the country. It is perhaps this, more than anything else, that distinguishes our approach to this bill.

I wonder if we might not be a little more open-minded about each other, instead of continually quibbling over bills that, basically, are an attempt to improve the situation of Canadians.

[English]

The Hon. the Speaker: Does Senator Prud'homme have a question?

Senator Prud'homme: Yes.

The Hon. the Speaker: Would Senator Setlakwe take a question?

Senator Setlakwe: Of course I will.

[Translation]

Senator Prud'homme: Honourable senators, I have the greatest respect for Senator Setlakwe, who is the senior senator in my adopted party, the Liberal Party. He belonged to it long before I did.

In the second part of his remarks, Senator Setlakwe addressed exactly what I wanted to say. How is that Quebec has far fewer young Native delinquents than Saskatchewan? It is because the two provinces understand the enforcement of this law differently. This is what we want to see dealt with.

I took part in debates on the abolition of the death penalty in the other place. I have always said I prefer nation-wide criminal law to a collection of regional criminal laws. I have to tell you that abortion would be prohibited in eight provinces, and the death sentence would probably exist in seven provinces, if they were provincial matters.

Senator Setlakwe was right in the first part of his remarks to say that criminal law applies uniformly across Canada. The differences lie in its interpretation and enforcement.

• (1100)

You gave a most vibrant example of that, with the result that the amendments moved by Senator Watts were adopted, following a vote of 41 in favour and 40 opposed, with no abstentions. We are particularly sensitive to the situation of certain groups. Nobody can fault Quebec on that score.

[English]

Senator Setlakwe: Honourable senators, the circumstances that I try to describe are the following: The Natives who are in jail in other parts of Canada do not necessarily live on the reserves, whereas in Quebec they do mostly. When they do come off of the reserves, we will have the same problems in Quebec as we do in the rest of the country. That is why we may become more indulgent in both parts of the country at that time, more than we are now.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I agree with Senator Setlakwe when he says that there should only be one criminal law system in Canada. The Standing Senate Committee on Legal and Constitutional Affairs had long discussions on Senator Grafstein's amendment. That amendment sought to eliminate a provision in Bill C-7 that allows a province to change the age to which the act applies. Senator Grafstein's argument was that, in Canada, the act should apply to everyone. Clause 61 reads as follows:

The lieutenant governor in council of a province may by order fix an age greater than fourteen years but not more than sixteen years for the purpose of the application of the provisions of this Act relating to presumptive offences.

Presumptive offences are the most serious ones. This is why Senator Grafstein proposed his amendment. He wanted to standardize the application of the act. We felt that this was a good thing. Therefore, the committee accepted Senator Grafstein's amendment, but the other place rejected it. Did the honourable senator agree with one of the amendments proposed in the report to eliminate the clause that I just read?

Senator Setlakwe: No, simply because the amendments adopted in the other place meet the requirements and needs of those regions of the country that want them. They add flexibility to the act. They allow the provinces to enforce the act as they see fit, within a legal framework that applies to the whole country.

Senator Nolin: Honourable senators, a young 14-year-old Gatineau boy, by Quebec order, would not come under federal law, whereas across the bridge, an Ottawa youth, by Ontario order, would. How do we explain this anomaly?

Senator Setlakwe: This is a matter left up to the courts, that is all.

Hon. Joan Fraser: Honourable senators, since it appears we have arrived at the test of regional legitimacy, as a senator from Quebec, I simply wanted to point out to this chamber that I was involved in the deliberations of the Senate Standing Committee on Legal and Constitutional Affairs, which thoroughly considered the bill. I could not attend all sessions of the committee, because of the work of the Special Committee on Terrorism. I read the minutes of the meetings. More importantly, no doubt, I read and reread the bill.

[English]

It is a very difficult bill to read. It could have been much better written. However, I have become persuaded, after months and months of serious consideration of this bill, that it is in fact a pretty good bill and, even more important, that it is better than the Young Offenders Act in several respects. I will give only one example.

Under the Young Offenders Act, a child can be tried in adult court. Under the Youth Criminal Justice Act, a child cannot be sent to trial in adult court.

As far as the system in Quebec is concerned, it is clear that the Government of Canada believes in the general philosophy that has been adopted by successive governments of Quebec — that is, of attempting to help young people in ways that do not involve imprisonment, ways that involve helping the young person to get his or her life back on track.

In this field, as in many others, we must bear in mind that we do live in a federation and that there are differences between the various regions of this federation. I had not really understood, until I was privileged to participate in the work of this committee, how deep are the divisions among the regions on this issue. The Government of Canada can pass this bill, but it is the provinces that administer justice. We are stuck with the fact that some provinces do not share the philosophy of the Government of Quebec, which I certainly share and which, as has been made plain, the Government of Canada shares. A law must be written that will push those provinces as far as possible but not lead to a state of complete chaos and open rebellion. That is what I believe this bill does.

This bill is not perfect. Of course it is not perfect. No human effort, as we say so often, is perfect, but I think it is a good bill. I believe that the Government of Quebec will be able to continue doing exactly what it has done. If there are changes, they may serve to nudge us a little further down the admirable road that Quebec has already adopted. As a Quebecer, I would be perfectly happy to vote in favour this bill.

Hon. A. Raynell Andreychuk: Honourable senators, I remind you of what Senator Wilson told us about the committee and its report. After studying for quite some time, after dialogue, debate and consensus-building in the best parliamentary form, the

committee's bottom line was that 13 amendments were necessary to make the bill acceptable. The majority of committee members had that point of view. The majority generally rules in a democracy, although the minority was in fact heard.

Honourable senators have chosen not to adopt the bottom line of that committee. Therefore, I do not see how I can support the bill. The minister's representative indicated that the one amendment that passed simply tinkered around the edges of the bill. Perhaps the minister is right that the amendment we passed regarding Aboriginals is not sufficient for Aboriginals. We knew that in the committee, but we said that it would be one, among 12 other amendments, that could start to make this bill effective. If this chamber does not take into account the wishes of the majority of committee members, we will not have an acceptable bill.

I said yesterday, quoting Professor Waller, that we need a crime-prevention strategy. Professor Doob said that no justice system gives us prevention of crime. We need an effective strategy of implementation. That is the point Senator Fraser addressed. If the provinces do not share the resources or the collective will to put this act into place, children who come before the justice system will be poorer than they are now under the Young Offenders Act.

• (1110)

Kim Pate, representing the Elizabeth Fry Society, works daily with youth. She put it best when she said that if there is a difference and disparity between the opinions of the federal government and the provinces — and in this case I note that the provinces are going in different directions — then we will not have a successful bill.

It is strange that criminal law should be what we collectively believe is the bottom line to which we have to adhere. If we have a province going in one direction and other provinces going in another direction, where is the collective will? Surely, this measure will be doomed to failure if we cannot find some common consensus. The common consensus is resources. If there is no money to back up this bill, it will not work. The amount being spent now is not sufficient. It is, again, tinkering around the edges.

The Young Offenders Act stood to have a chance, and it had some good things in it. What is wrong with the Young Offenders Act now are the amendments we put into it on the pretention that we were solving the problems of the youth justice system.

Therefore, one of the 13 recommendations that is absolutely necessary, one which we spoke to in committee, is that there has to be a review process. We have to ensure that the provinces take youth justice seriously and provide the resources. We have to ensure that the federal government puts in the resources. We have to be certain that children will not be victimized again by a bureaucracy rather than receiving resources.

MOTION IN AMENDMENT

Hon. A. Raynell Andreychuk: Therefore, I move:

That Bill C-7 be not now read a third time but that it be amended.

(a) on page 150, by adding, immediately after line 40, the following:

"Review of Act

158. (1) Three years after the coming into effect of the Act and at the end of every five-year period thereafter, the Minister of Justice shall undertake a comprehensive review of the operation of this Act and cause to be laid before both Houses of Parliament a report thereon including any recommendations pertaining to the amendments to this Act that the Minister considers necessary or desirable.

(2) For the purpose of the report referred to in subsection (1), the Minister shall consult the Attorney General of every province and persons, groups or class of persons or a body appointed or designated by or under this Act or an Act of the legislature of a province and representatives of aboriginal people of Canada.

159. (1) As soon as the Minister of Justice's report has been laid before both Houses, a comprehensive review of the report and of the provisions and operation of this Act shall be undertaken by such committees of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established by the Parliament to determine if the objectives of the Act are met in various provinces across Canada.

(2) The committee referred in subsection (1) shall, within six months after the completion of the review undertaken pursuant to that subsection or within such further time as Parliament may authorize, submit a report on the review to Parliament including a statement, if any, as to any changes the committee recommends." and

(b) by renumbering clauses 158 to 200 as clauses 160 to 202, and any cross-references thereto accordingly.

Honourable senators, we need to impress upon ourselves, the provinces and the federal government that children come first, that we will put in place a youth prevention strategy against crime, and that it will be effective.

The Hon. the Speaker: Before the Honourable Senator Andreychuk continues, I must ask: Honourable senators, is it your pleasure to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Did you wish to continue speaking, Senator Andreychuk?

Senator Andreychuk: I made my final comments, and I am sure they are on the record.

I simply want senators to understand that it is extremely important to take youth seriously and to insure that we do not go away today, as we did in 1995, which was when the Young Offenders Act amendment came into force, thinking that we were helping children when we were not. I believe this review puts the onus back on our shoulders and our consciences.

Hon. Marcel Prud'homme: Will the honourable senator entertain a question?

The Hon. the Speaker: Will Senator Andreychuk permit a question?

Senator Andreychuk: Yes.

Senator Prud'homme: Was the honourable senator's amendment not an amendment put to the committee by Senator Joyal?

Senator Andreychuk: Yes, it was, and I was very supportive of it.

Hon. Terry Stratton: Honourable senators, pursuant to rule 38, I suggest that we stack the votes on the amendments and the bill itself and hold those votes at 12:30 p.m., if that is agreeable.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I did indeed think we would proceed in this fashion. However, do I understand correctly that we have heard the last amendment of this bill?

There is another amendment, so we will have two amendments and third reading of the bill.

[English]

The Hon. the Speaker: Honourable senators, this is a practice to which we often agree. However, it requires agreement. Is it agreed?

Hon. Senators: Agreed.

The Hon. the Speaker: The amendment of Senator Andreychuk will be dealt with as per our order of yesterday, at 12:30 p.m., along with the suggestions of both sides.

We are now back to debate on Bill C-7, as amended.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, the brief comments made by Senator Setlakwe lead me to reintroduce an amendment that had been accepted by the committee. I am referring to Senator Grafstein's amendment, which seeks to eliminate clause 61 from the bill. Again, this clause reads as follows:

The lieutenant governor in council of a province may by order fix an age greater than fourteen years but not more than sixteen years for the purpose of the application of the provisions of this Act relating to presumptive offences.

MOTION IN AMENDMENT

Hon. Pierre Claude Nolin: Honourable senators, I move, seconded by Senator Andreychuk:

That the Bill, as amended, be not now read a third time but that it be further amended

(a) in clause 61, on page 68, by deleting lines 23 to 28; and

(b) by renumbering clauses 62 to 200 as clauses 61 to 199 and any cross-references thereto accordingly.

[English]

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Hon. Consiglio Di Nino: Would Senator Nolin take a question for clarification?

Senator Nolin: Yes.

Senator Di Nino: Was this amendment presented in committee?

Senator Nolin: Yes, it was.

Senator Di Nino: Was there a vote in committee? If so, was it defeated or approved?

Senator Nolin: Senator Grafstein put that amendment in committee and it was debated. It was agreed to by the vast majority of the committee. It was not agreed to unanimously. That was not news to us because Senator Grafstein had announced his amendment many weeks prior to the final session of the committee dealing with the clause-by-clause consideration of the bill. His arguments were very simple. The Criminal Code, which is the authority, the criminal power of Parliament, is the *modus operandi* of Bill C-7. Given that it is the exclusive power of Parliament, the provinces should not be allowed to change how the federal law is applied in the provinces. That is the argument of Senator Grafstein.

Senator Di Nino: The Honourable Senator Nolin indicated that the amendment was put at committee and was passed. Did the report from the committee include the amendment?

Senator Nolin: Yes, the report included the amendment.

Senator Di Nino: It was part of the report of the committee.

Senator Nolin: It was part of the report under Item No. 6 of the amendments.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I would like those who will be reading the *Debates of the Senate* later to fully understand what happened today. Senator Andreychuk was kind enough to tell me clearly that the amendment she moved was, in fact, not her amendment. It is an amendment that was drafted. It is of course her amendment, but we could say that it is a Joyal-Andreychuk amendment. Now, Senator Nolin, who worked for four months — I know because I know the staff who worked with him on this bill — thought, as a naïve young senator, that he might be able to improve the legislation. Today, he has come up face to face with reality. He is finding out that all the work that one might do is almost useless when the final decision is made by government authorities. I want him to assure me, and also Senator Andreychuk, who confirmed to us that this was a Joyal-Andreychuk amendment, that it is indeed a Grafstein-Nolin amendment that you share?

Senator Nolin: That is exactly it.

[English]

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment of the Honourable Senator Nolin?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Honourable senators, will all those in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Honourable senators, will all those opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: There will be a recorded division at 12:30 p.m., in sequence, as per the agreement of this house.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I now call Item No. 4 on the Order Paper, resuming debate on third reading of Bill C-6.

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, to amend the International Boundary Waters Treaty Act,

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill be not now read a third time but that it be amended, in clause 1, on page 5, by adding after line 12 the following:

“(3) The Governor in Council may only make a regulation under subsection (1) where the Minister has caused the proposed regulation to be laid on the same day before each House of Parliament and

(a) both Houses of Parliament have adopted resolutions authorizing the making of the regulation, or

(b) neither House, within thirty sitting days after the proposed regulation has been laid, has adopted a resolution objecting to the making of the regulation.

(4) For the purposes of paragraph (3)(b), “sitting day” means a day on which either House of Parliament sits.—(Pursuant to the Order adopted on December 17, 2001, all questions will be put to dispose of the Bill at 12:30 p.m.)

Hon. A. Raynell Andreychuk: Honourable senators, I rise to speak to Bill C-6 in support of Senator Murray’s amendment. The honourable senator has eloquently spoken to the issues and to the need for this amendment.

• (11:30)

In committee, the need for the amendment was pointed out to us by virtually all witnesses, and Senator Murray referred in particular to a witness who is much respected for her ability to draft legislation and who is now teaching at the University of Ottawa. Clause 13 indicates that there is a prohibition of water removal. Yet clause 13(4) indicates that subclause (1) does not apply in respect of the exceptions specified in the regulations.

I want to underscore what I said in committee and in support of Senator Murray’s amendment: We are finding that regulations are no longer technicalities. Most bills are now being “gutted,” if I may use that term. The essence of what used to be the prerogative of Parliament to legislate is now falling under regulations.

It is very worrisome when it concerns something as sensitive as the prohibition on the export of bulk water, as this bill contemplates. Minister Manley indicated that it was not his

intention to export bulk water, and I accept that. Minister Manley’s record speaks to his being a man of his word. I believe that he will follow the intent of this bill. Therefore, it is not a question of trust or mistrust; it is a question of there being entirely too much government by regulation. We do not know how long this legislation will stay on the books, giving carte blanche to what any succeeding government may wish to do with respect to the export of bulk water.

I have no difficulty with the present administration of Minister Manley, and I accept that that is not their intention. However, we do not know what succeeding governments will think and do. Will they share the same perspectives? Will they look at the environment in the same way?

Honourable senators, we must stop this erosion of parliamentary control by allowing virtually everything to be included in the regulations. It is time that we reclaim the responsibility for implementing legislation and allow only technical issues to be dealt with in regulations. We must not succumb to the argument that is being made that it is always more efficient to work through regulations. We should not confuse expediency with efficiency and correct parliamentary procedure.

I wish to support Senator Murray’s amendment. Water will be the issue that oil was in the last decade. We will now hear from someone who has a much greater expertise in this area.

Hon. Mira Spivak: Honourable senators, during the committee hearings on this bill, I listened carefully to the testimony of the minister, his officials and other witnesses. I rise to speak in support of Senator Murray’s amendment. However, there have been other amendments. I also want to add some general comments on the process and the bill. The minister told the committee:

By adopting Bill C-6, Parliament will set down in law an unambiguous prohibition on bulk water removal of boundary waters... It affirms an approach that is comprehensive, environmentally sound, respectful of constitutional responsibilities and consistent with Canada’s international trade obligations.

In agreement with Senator Andreychuk, I do not doubt the minister’s word. He truly believes that. However, on every count, witnesses to the committee said otherwise. The bill is not unambiguous and it is not comprehensive. It does not directly address the environmental effects of bulk water exports. In fact, the words “environment” or “ecology” are nowhere to be found in the bill. Its constitutional footing is soft and it is a transparent effort to skirt, not face up to, our international trade obligations. That is what was said by all witnesses, except the minister and his staff.

The argument could be made that these witnesses were called at the request of my colleagues on the committee. That is correct. It begs the question: Why were no outside experts brought before the committee to concur with the bill when they could have been?

The objective of this bill is one part of a three-pronged approach to protecting Canadian watersheds from bulk exports. For the other prongs, the government is relying on studies by the International Joint Commission and on the eternal goodwill of the provinces. Even now, that goodwill is questionable. One province wants royalties from water exports when the economies of exports improve. Another waits quietly on the sidelines. Will other provincial governments reverse their current policies? It is naive to expect that none of them will want to export water when water becomes a profitable commodity. It will be the oil of the 21st century.

As for transboundary waters, something that is clearly in the control of the federal government, this bill does not cover the waterfront. The bill does not set out the water basins to which it will apply. That is a matter for the minister to decide. Draft regulations list three water basins: Great Lakes, Hudson Bay and the Saint John River.

One witness suggested that nothing west of Manitoba would be protected. More important, whatever protection this government gives through regulations today can be removed next year by this government or at any time by any future government without reference to Parliament. The amendments have addressed that problem.

The minister claims that the bill is environmentally sound. His officials speak of the need for this bill to protect our freshwater resources in their natural state. They speak of the government's environmental approach to prohibiting water exports. However, this bill is by no means a proposed environmental legislation. As many witnesses observed, the bill contains no references to the environment — not one.

In the draft regulations, we find no reference to the environment in the definitions and no reference to the environment in the context of water removals, also known as bulk exports. The only time the environment is mentioned is in reference to licensing projects, which could include water exports if a minister chooses and the IJC agrees. If the minister makes that decision, any project licence must be "compatible with the management of the resources, environment and economy of Canada." I respectfully suggest that management of the environment is very different from protection of the environment.

Mr. Nigel Bankes, Professor of Law at the University of Calgary and an authority on the IJC and the Boundary Waters Treaty, spoke on the bill's environmental and constitutional weakness. He stated that, as currently drafted, the bill does not offer environmental protection and is on shaky ground constitutionally. It is treading on the provinces' constitutional authority over water as a natural resource. Instead of giving us an environmental protection bill or even a trade bill that could be constitutionally valid, the government has tied its policy to the 1909 Boundary Waters Treaty and the Boundary Waters Treaty Act, neither of which speak of the environment.

As the chairman pointed out at the committee, they speak of the natural level or flow of boundary waters. In 1909, those

words had nothing to do with environment protection. They were put there to protect shipping and navigation. These are the same words found in Bill C-6.

The constitutional problem lies in clause 13, the proposed prohibition section, which goes beyond the treaty. The treaty does not prohibit projects that would affect the natural level or flow of boundary waters. Rather, article III of the treaty creates a regulatory scheme that requires the government and the IJC to approve any new project that affects water levels or flows. Scores of them have been approved.

In subclause 13(2) of the bill, bulk exports are prohibited not only if they affect the natural level or flow but also if they are "deemed" to have that effect. In other words, there is no need for demonstrable proof or scientific evidence. If the government says so, it is so.

• (1140)

Those extensions of the treaty cost the government its right to rely on section 132 of the Constitution Act. That section gives Parliament the authority to make laws that implement an international treaty. Bill C-6 is not merely implementing a treaty; it is breaking new ground.

Moreover, the deeming provision, which says that the real world does not matter, may be administratively attractive. Governments can deem black to be purple for administrative purposes, but courts say that they cannot do it for constitutional reasons.

Professor Bankes cited the *Sutherland* decision relating to the Natural Resources Transfer Agreement as an example. Some learned members of the committee did take issue with his position. However, the government's legal counsel did not answer the major concern, particularly with respect to the deeming clause.

If the government cannot rely on section 132 of the Constitution Act, on what might it rely to withstand a constitutional challenge? One senator suggested that the government could exercise its criminal law power. Bill C-6 provides for large fines and imprisonment, therefore there is no constitutional problem. The learned senator suggested that the department has very eloquently brought the criminal power to bear along with the treaty. In reply, Professor Bankes referred briefly to the Supreme Court decision on the *Hydro-Québec* case, which expanded the notion of criminal law.

We must look carefully at that important ruling. First, it does acknowledge that the Constitution gives Parliament broad powers to make criminal law. However, assigning a heavy fine or jail term to a law does not automatically make it constitutionally valid. Aside from the Charter, there is one qualification that has been attached to Parliament's plenary power over criminal law.

Citing Mr. Justice Estey, Mr. Justice La Forest wrote that the power "...cannot be employed colourably...it cannot permit Parliament simply by legislating in the proper form to colourably invade areas of exclusively provincial legislative competence."

If water in its natural state is a provincial matter, how can Parliament properly enact the criminal law? What is the test to determine whether Parliament's action is colourable?

Mr. Justice La Forest turned to a ruling by Mr. Justice Rand for guidance.

Is the prohibition...enacted with a view to a public purpose which can support it as being in relation to criminal law? Public peace, order, health, and morality: these are the ordinary though not exclusive ends served by that law.

In his majority decision on the *Hydro-Québec* challenge to the Canadian Environmental Protection Act, Mr. Justice La Forest established that the protection of a clean environment is also a legitimate public purpose.

All around this bill, the government is suggesting that it has an environmental purpose. Yet, in the drafting, the government is tying the bill solely to a historic treaty created to promote commercial shipping. Perhaps the case could be made that commercial shipping is a public good, and certainly the government has constitutional authority over navigation. However, if a water export project demonstrably affects neither, but is only deemed to affect it, can the law stand the test?

Honourable senators, we had an amendment in committee that suggested that the word "environment" be used in one of the clauses and that it be specific to the bill. That amendment was rejected by the committee, and it was rejected here, too.

Professor Bankes offered a solution. He proposed amending the bill to give the minister the authority to reject projects that endanger the integrity of the ecosystem of the water basin. In other words, he would clearly give the bill an environmental focus. An amendment with the same intent, but with somewhat different wording, was put before the committee, as I just stated, and before this chamber. It was rejected, as were all the amendments that would establish Parliament's clear intent to prevent bulk water exports.

In Mr. Justice Lamer's dissenting opinion on the *Hydro-Québec* case, there is another warning that we should not ignore. Speaking of the use of the criminal law powers, Justice Lamer wrote: "It would be an odd crime whose definition was made entirely dependent on the discretion of the executive." Yet, this is exactly what we have in Bill C-6 with its extraordinary use of regulations to determine what constitutes a bulk export, where the law applies, and what exceptions are permissible.

Is Bill C-6 environmentally and constitutionally sound? There are very strong reasons to suspect that it is not. As if we need further proof, officials have not yet decided whether the amended Boundary Waters Treaty Act should be subject to the Canadian Environmental Assessment Act. Currently, it is not.

With this bill, honourable senators, we are giving the minister the authority to license projects, including exceptions granted for water exports, without the need for an environmental assessment.

Is this bill consistent with Canada's trade obligations? Trade experts before the committee said very clearly that by avoiding any reference to water exports, we are not avoiding our trade obligations. In fact, they suggested that a bill that imposes an outright export ban would be better.

Honourable senators, saving the best for last, is this bill an unambiguous prohibition on bulk water removals? It is ambiguous in the extreme. It reserves for the minister and his political and departmental advisers virtually every important decision that can be made on water exports. The bill is silent on everything from the very definition of bulk removal to the types of exemptions that may be granted. Parliament is silent. It is given no opportunity to say anything in the years ahead.

Inside the committee room, officials said that they need those powers to deal with new circumstances as they arise. The effect, however, is to remove the need to return to Parliament, to change course or to make decisions about our nation's fresh water. The notion that a minister and his advisers should have such a free range is inimical to the concept of parliamentary democracy. It is part of a growing, dangerous tendency, as Senator Raynell Andreychuk stated in the committee, to remove parliamentarians from law-making. In this session alone, we find extraordinary use of the regulatory authority. We find extraordinary use of regulatory authority in this bill, in Bill C-5, the proposed species at risk act, Bill C-11, the immigration bill, and in the two anti-terrorism bills, Bill C-36 and Bill C-42.

This is shocking to Canadians, honourable senators, who believe it is important to cast ballots for MPs to represent them and to write to senators hoping that we will amend bad laws hastily passed by the Commons. Bill C-6 is certainly one of those laws, if for nothing else, for its efforts to make Parliament even more redundant.

By concurring with this bill, honourable senators, we are acting against our own interests and against the interests of those who succeed us in the chamber and the House of Commons. Are we here to sit in committee, to listen to learned experts, and then do nothing about it, not even to contemplate the slightest hint of amendment? If we are here to allow the principle of legislation, which should be in the bill, to simply be in regulation, then why are we here?

Mr. Radwanski, on another matter, stated in committee that if the principles of legislation are in the regulations and not in the legislation, then we ought not to pass the bill. He was referring to human rights, but I would say that is an accurate observation of every bill. Further, I would say that we need a remedy for this situation. In the coming year, I would hope that we would find a remedy to this tendency to put everything into the regulations and not into the legislation. I support Senator Murray and his amendment.

Hon. Nicholas W. Taylor: I have a question, honourable senators.

The Hon. the Speaker: I am sorry, but I have been advised by the deputy clerk that the time for Senator Spivak's speech, questions and comments has expired.

Senator Corbin: Is Senator Spivak asking for an extension of time in order that questions might be asked?

The Hon. the Speaker: Is Senator Spivak requesting leave to continue?

Senator Spivak: I would ask for leave to continue.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we are attempting to keep speeches as close to 15 minutes as possible. However, I would agree to one question and one answer to allow Senator Spivak the opportunity to respond.

Senator Taylor: Honourable senators, in the interests of brevity, I will try to keep my question concise.

Perhaps I misunderstood the argument of the honourable senator when she said that water in its natural state is a provincial matter. When we speak about "boundary water," it means that water will cross the boundary. Does the federal government not have complete say in commodities that cross boundaries, even with something as provincial as oil or gas? If water crosses a boundary, the federal government must have some input.

Senator Spivak has said that water in its natural state is a provincial matter. That is true when water is in its natural state. However, we are discussing bulk water exports. How is the federal government kept out of that matter?

Senator Spivak: I am not sure how to respond to that question. In the three-pronged policy, the provinces agreed that they should not export bulk water. The federal government has complete jurisdiction over all navigable waters and trade. It would take further study — and we hope to have an opportunity to do that — to sort out all of the conflicting opinions on the issue of water and whether or not it is a good. If it becomes a commercial item, does it then become a good? This issue is not as clear as it might be. I remarks were made in that context.

Hon. Eymard G. Corbin: Honourable senators, in speaking to this amendment, I shall put aside my hat as the sponsor of Bill C-6. I am prompted to make some comments about this amendment as an observer of the phenomenon that occurred in relation to this bill.

To this day, I never cease to be amazed at the onslaught of senators opposite to what is basically a straightforward bill. This proposed legislation would implement practices that have been in place for the last 90 years. Senators opposite have read into this bill more than is actually there. In my opinion, these senators have gutted the efforts and the straightforwardness of the bill and

the regulations. If we were to follow their suggestion to put aside the regulations and incorporate everything by way of legislation, we would hamstring or cripple the ability of the executive and the bureaucracy to properly apply the provisions of the treaty and the legislation on a day-to-day basis. This is an important point. If the regulatory provisions were included in the bill, we would have no rules at all. I find that to be a ridiculous proposition.

I totally subscribe to the legitimate concerns expressed by senators opposite with respect to the perceived transfer of legislative powers to regulatory powers. This has been an ongoing concern since the creation of Parliament.

During my first years on Parliament Hill, in the late 1960s, I sat with an honourable member of the other place named Joe Clark. We sat on the same committees. He would consistently raise the issue of regulatory powers, and he was not the only one who did so. I raised the matter on one occasion, as well, as have other members of Parliament.

If there is this perceived concern about the erosion of what are traditionally our parliamentary prerogatives by the inclusion of those prerogatives in regulations, then we ought to do something about that. However, in my opinion, this straightforward bill is an ill-chosen vehicle by which to launch that kind of attack.

Pursuant to rule 86(1)(d), honourable senators established the Joint Committee for the Scrutiny of Regulations to which we appoint eight senators. I do not know how many members from the House sit on that committee. If this issue has come to the head that we are asked to believe it has, then that committee has an onus to examine that area thoroughly and to report to our respective houses with proper recommendations.

Senators opposite have used this bill as an omnibus receptacle of their general concerns about trade and environmental issues. That is not what this bill is all about. This bill is based on the treaty and it is straightforward. Senators opposite have gone overboard in trying to dress this bill as something that it is not.

The concerns of honourable senators opposite are legitimate, and I share some of those concerns. However, it is typical of environmental seminars across the country that people become so worked up that, at times, they are sucked into their own vortex.

Some Hon. Senators: Oh, oh!

Senator Corbin: I appeal to all honourable senators: Let us be candid. Senators opposite have said that this is a good bill. This is a good bill.

Senator Tkachuk: It is a bad one!

Senator Corbin: Honourable senators appreciated my explanations of the bill; they all said that. Senator Carney said that much. They thought I did a great job. Then, in committee, they tore the bill apart. You have to make up your minds, honourable senators. You have to trust the wording of the bill and the intent of the draft regulations.

• (1200)

Consider the trade issue, and water as trade. I should like to put on the record a quote from a book called *Water* by Marq de Villiers. I shall quote from page 278:

CELA —

— which is the Canadian Environmental Law Association —

— believes that Canada caved in to American pressure when it failed to exempt bulk water sales under NAFTA. In a way, however, the story is even odder than that. No less a person than Pat Carney, Canada's trade minister during negotiations, seems to have believed that water had been exempted and was puzzled to find out it had not. The story was told by Brian McAndrew, a *Toronto Star* reporter:

The extract from that article reads as follows:

It [the tipoff that water was not after all exempt] began with a question to a senior policy adviser to Pat Carney.

"It's exempt, it's right there in black and white," the advisor said.

But after trying to find the reference in the text, the adviser came up dry. "I don't know what happened. We discussed it. It should be there."

The next tipoff came when Carney was tossed the same question during a constituency meeting three months later.

"Water is exempt from the deal — it's right in the agreement," she replied. She too was asked to point out the wording in the text. After consulting an aid, she said, "it was there."

What do we have here? We have an attempt to put in a boundary waters treaty issues that should have been concluded under NAFTA, another treaty. That is bootlegging of the worst kind, and it is subverting the intent of the treaty and the intent of this legislation.

Honourable senators, I beg of you to support this legislation. Put your ghosts and scarecrows in the closet and let us get on with the business of administering what has been a very good treaty for both Canada and the United States over the years.

Hon. Sheila Finestone: Honourable senators, I wish to thank the honourable senator for his clearly enunciated evaluation of the situation. I remember very well the comments of Pat Carney. I remember very well the debates as we were dealing with the Free Trade Agreement. I was very concerned that the same thing was being repeated here. I am glad to hear that it is not.

Those who wonder whether it is worthwhile to sit on the Standing Joint Committee of the Senate and the House of

Commons on Scrutiny of Regulations should think again because that committee can bring about important and substantive changes. It has been my pleasure to serve on that committee. For anyone interested in supervising what regulations do in comparison or in contrast to the intent of a bill, good and constructive work can be done on that committee.

Hon. Lowell Murray: Honourable senators, I should like to ask Senator Finestone a question. Since her good memory obviously extends at least back to 1988, I should like to ask her a question about a more recent event, that being the signing by Canada, the United States and Mexico of the NAFTA and an accompanying protocol thereto, in 1994, I believe, which made a very clear statement on the non-presence of water issues in the NAFTA treaty. Does the honourable senator remember who signed that statement for Canada?

Senator Finestone: There is every possibility that I could so remember. Thank you.

Senator Murray: Does the name Jean Chrétien ring a bell?

The Hon. the Speaker: Honourable senators, is the house ready for the question on Bill C-6?

Hon. Senators: Question!

The Hon. the Speaker: The question is on the amendment of the Honourable Senator Murray.

Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators haven't risen:

The Hon. the Speaker: By agreement, the division will take place at 12:30 p.m. today.

Hon. Terry Stratton: It is my understanding that we will now be voting on the amendments to Bill C-7, Bill C-7 itself, the amendment to Bill C-6 and Bill C-6 itself.

Senator Carstairs: That is right.

The Hon. the Speaker: Honourable senators, is it agreed that the bells will begin to ring five minutes earlier than originally agreed and that they will ring for 20 minutes rather than for 15 minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: Call in the senators.

• (1230)

The Hon. the Speaker: Honourable senators, it is our intention to vote on Bill C-7 and Bill C-6 in that order. Potentially, we will have three votes on Bill C-7: first, the motion in amendment of Senator Nolin; second, the motion in amendment of Senator Andreychuk; and then third reading as amended. We will then move to Bill C-6 and deal firstly with the motion in amendment of Senator Murray and then third reading.

YOUTH CRIMINAL JUSTICE BILL

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

On the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Andreychuk, that the Bill, as amended, be not now read a third time but that it be further amended on page 68, clause 61 as follows:

(a) Delete lines 23 to 28; and:

(b) Renumber clauses 62 to 200 as clauses 61 to 199 and any cross-references thereto accordingly.

Motion in amendment of Honourable Senator Nolin negated on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk
Atkins
Beaudoin
Bolduc
Buchanan
Comeau
Di Nino
Doody
Finestone
Forrestall
Grafstein
Johnson
Joyal
Kelleher
Keon
Kinsella

LeBreton
Lynch-Staunton
Meighen
Moore
Murray
Nolin
Oliver
Pitfield
Prud'homme
Rivest
Roche
Spivak
Stratton
Tkachuk
Watt—31

NAYS THE HONOURABLE SENATORS

Austin
Banks
Biron
Bryden
Callbeck
Carstairs
Chalifoux
Christensen
Cook
Cools
Corbin
Cordy
Day
De Bané
Fairbairn
Ferretti Barth
Finnerty
Fraser
Furey
Gauthier
Graham
Hubley

Jaffer
Kenney
Kirby
LaPierre
Léger
Losier-Cool
Maheu
Mahovlich
Milne
Morin
Phalen
Poulin
Poy
Robichaud
Rompkey
Setlakwe
Sibbeston
Stollery
Taylor
Tunney
Wiebe—43

ABSTENTIONS THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, the next motion in amendment is moved by the Honourable Senator Andreychuk, seconded by the Honourable Senator Nolin, as follows:

That Bill C-7 be not now read a third time but that it be amended,

(a) on page 150, by adding, immediately after line 40, the following:

"Review of Act..."

Some Hon. Senators: Dispense!

• (1240)

Motion in amendment of Senator Andreychuk negated on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Moore
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Pitfield
Finestone	Prud'homme
Forrestall	Rivest
Grafstein	Roche
Johnson	Spivak
Joyal	Stratton
Kelleher	Tkachuk
Keon	Watt—31
Kinsella	

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Banks	Kenny
Biron	Kirby
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Morin
Corbin	Phalen
Cordy	Poulin
Day	Poy
De Bané	Robichaud
Fairbairn	Rompkey
Ferretti Barth	Setlakwe
Finnerty	Sibbeston
Fraser	Stollery
Furey	Taylor
Gauthier	Tunney
Graham	Wiebe—43
Hubley	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: The next question is on the motion for the third reading of Bill C-7.

Motion agreed to and bill, as amended, read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Austin	Kenny
Banks	Kirby
Biron	LaPierre
Bryden	Léger
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Milne
Cook	Moore
Cools	Morin
Corbin	Phalen
Cordy	Poulin
Day	Poy
De Bané	Robichaud
Fairbairn	Roche
Ferretti Barth	Rompkey
Finestone	Setlakwe
Finnerty	Sibbeston
Fraser	Stollery
Furey	Taylor
Gauthier	Tunney
Graham	Watt
Hubley	Wiebe—47
Jaffer	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Prud'homme
Forrestall	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—24

ABSTENTIONS
THE HONOURABLE SENATORS

Grafstein
Joyal
Pitfield—3

• (1250)

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, to amend the International Boundary Waters Treaty Act.

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill be not now read a third time but that it be amended, in clause 1, on page 5, by adding after line 12 the following:

“(3) The Governor in Council may only make a regulation under subsection (1) where the Minister has caused the proposed regulation to be laid on the same day before each House of Parliament and

(a) both Houses of Parliament have adopted resolutions authorizing the making of the regulation, or

(b) neither House, within thirty sitting days after the proposed regulation has been laid, has adopted a resolution objecting to the making of the regulation.

(4) For the purposes of paragraph (3)(b), “sitting day” means a day on which either House of Parliament sits.—(Pursuant to the Order adopted on December 17, 2001, all questions will be put to dispose of the Bill at 12:30 p.m.)

YEAS THE HONOURABLE SENATORS

Andreychuk
Atkins
Beaudoin
Bolduc
Buchanan
Comeau
Di Nino
Doody
Forrestall
Johnson
Kelleher
Keon

Kinsella
LeBreton Lynch-Staunton
Meighen
Murray
Nolin
Oliver
Prud'homme
Rivest
Roche
Spivak
Stratton
Tkachuk—25

NAYS THE HONOURABLE SENATORS

Austin
Bacon
Banks
Biron
Bryden
Callbeck
Carstairs
Chalifoux
Christensen
Cook
Cools
Corbin
Cordy
Day
De Bané
Fairbairn
Ferretti Barth
Finestone
Finnerty
Fraser
Furey
Gauthier
Grafstein
Graham
Hubley

Jaffer
Joyal
Kenny
Kirby
LaPierre
Léger
Losier-Cool
Maheu
Mahovlich
Milne
Moore
Morin
Phalen
Pitfield
Poulin
Poy
Robichaud
Rompkey
Setlakwe Sibbeston
Stollery
Taylor
Tunney
Watt
Wiebe—50

The Hon. the Speaker: Honourable senators, we are now voting on Bill C-6, the amendment of Senator Murray.

ABSTENTIONS THE HONOURABLE SENATORS

Motion in amendment negated on the following division:

Nil

The Hon. the Speaker: Honourable senators, we will now move to the vote on the third reading of Bill C-6.

• (1300)

[Translation]

Motion agreed to and bill read third time and passed on the following division:

ANTI-TERRORISM BILL

YEAS THE HONOURABLE SENATORS

Austin	Joyal
Bacon	Kenny
Banks	Kirby
Biron	LaPierre
Bryden	Léger
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Milne
Cook	Moore
Cools	Morin
Corbin	Phalen
Cordy	Pitfield
Day	Poulin
De Bané	Poy
Fairbairn	Robichaud
Ferretti Barth	Roche
Finestone	Rompkey
Finnerty	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gauthier	Taylor
Grafstein	Tunney
Graham	Watt
Hubley	Wiebe—51
Jaffer	

NAYS THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Prud'homme
Forrestall	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—24

ABSTENTIONS THE HONOURABLE SENATORS

Nil

THIRD READING—MOTION TO ALLOCATE TIME ADOPTED

Hon. Fernand Robichaud (Deputy Leader of the Government, pursuant to notice given on December 17, moved:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration of third reading of Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism;

That, when the debate comes to an end or when the time provided for the consideration of the said motion has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the said motion; and

That any recorded vote or votes on the said question be taken in accordance with rule 39(4).

He said: Honourable senators, it is my duty to inform you that we have not been successful in reaching an agreement to dispose of all stages of Bill C-36.

[English]

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

[Translation]

Senator Robichaud: Honourable senators, after numerous attempts, we have still not been successful in reaching agreement on the approach to be taken to dispose of Bill C-36. This is a rather important bill. We have carried out a preliminary study of it. We have held an exhaustive debate on second reading. We have considered it clause by clause in committee. We have debated the committee report. The debate began, of course, in this chamber, and the bill has been debated on several occasions. Amendments have been put. The bells have been rung numerous times. One evening, when we could have had four hours of debate, we had three hours of bells and one hour of speeches.

Honourable senators, noble efforts have been made on both sides of this Chamber to reach an agreement. We did not succeed. I therefore find myself obliged to move this motion, in order to get the bill passed.

[English]

Some Hon. Senators: Shame!

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we have arrived at the stage where the guillotine has been imposed by the government in this house, just as it was imposed in the other House.

Senator Lynch-Staunton: Shame!

Senator Kinsella: When one looks around the walls of this honourable house, one sees the images of those who struggled for Canadian freedoms. Unfortunately, those images were not able to transcend the message that Canadian freedom has been brought about not by accident but by deliberate decisions and deliberate acts of Canadians since 1867.

However, when the guillotine is brought down on a measure, it causes us, and I hope the Canadian public, to pause for a moment to at least ask why parliamentarians have arrived at this impasse. We have arrived at this impasse not because this side did not recognize that we are in a time of crisis or in a time of strain. It is difficult to know which term to use because, as far as Bill C-36 is concerned, from the minister up or down, we have been reminded that there is no emergency and this is not emergency legislation. Reference is made, however, to the tragedy of September 11, and other arguments are advanced that governments need special powers, notwithstanding that no *prima facie* case has been made about the nature of the threat in Canada that would cause us to give the government special powers because it did not have sufficient powers or tools to deal with criminals, such as those associated with the tragedy on September 11. Witness after witness who appeared before the committee, as well as those individuals who have been writing about this in the media and elsewhere, have correctly pointed out that the crimes that have been or can be associated with the September 11 tragedy could be prosecuted under the present laws of the land.

However, this side was quite prepared to show good faith and a sense of collaboration because we adopted Bill C-36 at second reading. We accepted the principle that the state should be given some extra powers. We made it perfectly clear however that, contingent to the state having extra powers, there had to be extra safety valves to guard against the possible abuse of these special powers. We were looking for the balance, and we were pleased that the special committee of the Senate that considered the subject matter of Bill C-36 initially came forward with a unanimous report, which was adopted by the Senate. The report outlined where changes could be made to the bill to bring about a balance between the protection of human rights and civil liberties of Canadians, and the extra powers that the state argued for successfully, because we adopted the bill at second reading. We accepted the principle.

The government would move the guillotine to shut down debate and bring this bill to a vote, as they did in the House of Commons. Every Canadian can count. We know this is a Liberal-dominated Senate. It is a pity that the abandonment of liberal principles as espoused by Pierre Elliott Trudeau and Lester Pearson did not manifest themselves with the present class of Liberal parliamentarians. They have failed Canadians. The use

of instruments like the guillotine and the use of their massive domination of this house speaks to the frustration of senators who do important work on legislative committees in special studies, only to be steamrolled by this majority.

This is what we are dealing with in the motion that is before us. It is using power to secure more power. It was not necessary. A common report had been adopted by the Senate, with this house embracing the first report of the special committee that considered the subject matter of Bill C-36.

• (1310)

Honourable senators, I know that every senator must have a concern — the amber light must be flashing — as to who might become the targets of this extraordinary power that will be in the hands of the police, federal and provincial peace officers wherever, as well as secret service agents, the agents of CSIS and military agents. Who will be their targets in Canada? My fear is that we will not have to look very far. We do not need a great deal of imagination to identify a large number of Canadians who will be targeted, who will be harassed, who will be victimized and, quite frankly, who will lose their freedom because of the powers that the state will acquire under this act.

Honourable senators, we need not reach back very far to see where it has happened in the past. It happened in the early 1970s on the streets of Montreal. I do not think there was ill will on anyone's part, but many Canadians lost a lot of freedom. Multiply the number of days in captivity against the hundreds who were detained under the emergency powers invoked under the War Measures Act.

Look back a few more years, honourable senators, to what happened to Canadians of Japanese ancestry. There was not necessarily ill will on anyone's part. At that time, there was no Charter. If we find goodness in evil, as Saint Augustine sometimes refers to in his *City of God*, perhaps this is one of the contributions that Japanese Canadians have made to the growth of Canadian freedom. Their freedom had suffered.

Who will be the targets over the next few years? As members of Parliament, in this house and our colleagues in the other place, to whom do we have to make sure that our telephone numbers are available so we do not become the new Canadian *detenidos* or *desaparecidos*, well known in countries in the southern part of this hemisphere? It can happen in Canada. This is not American television. It has happened in our own lifetime. We saw it in the streets of Montreal in the 1970s, and it was seen in Canada during the 1940s.

I worry particularly for the victimization that I fear would fall from the maladministration of these powers against Canadians of Arab origin. I worry for those who are members of visible minority communities. I worry for those whose religious expression has them look different because of their religious head garb, whether it be the Sikhs in their turbans or the publicly worn head garb of many other faith communities. It has happened in the past, and I fear it will happen again.

It is regrettable that this government will not see the light. There was no opposition to the state having these extra powers. We were asking for a little creativity —

The Hon. the Speaker: Under the rules, the deputy leaders have 10 minutes to speak to this motion, and Senator Kinsella's time has expired.

Hon. Consiglio Di Nino: Before I begin, how much time do I have, Your Honour?

The Hon. the Speaker: Normally, I would alternate side to side. Does Senator Di Nino mind if I go to Senator LaPierre?

Senator Carstairs, do you wish to speak?

Hon. Sharon Carstairs (Leader of the Government): I do indeed wish to speak.

The Hon. the Speaker: Under the rules, leaders have half an hour to speak.

Hon. Marcel Prud'homme: Point of order!

The Hon. the Speaker: On a point of order, Senator Prud'homme.

Senator Prud'homme: Senator Di Nino had a good question when he asked how much time he is allowed. It is two and one-half hours. No one can speak more than 10 minutes. That means we could have 15 speeches of 10 minutes each, if I am right.

The Hon. the Speaker: That is correct. Rule 40(2)(c) says that with respect to this debate, no senator may speak longer than 10 minutes. There is an exception, however. The Leader of the Government in the Senate and the Leader of the Opposition in the Senate may each speak for up to 30 minutes.

Hon. Anne C. Cools: Honourable senators, I am curious. Maybe we are being held in suspense, or maybe the best is coming later or the best will be last. When Senator Robichaud gave notice of the motion last night, he began by informing the Senate that it was not possible to reach an agreement. To the extent that the difficulty in reaching agreement seemed to be the *raison d'être* for the motion, I would have thought that, following on Senator Robichaud's remarks, we would have had some insight, if not some explanation, and at least some gleaning of the reasons why the opposition had difficulty in coming to an agreement. I just thought that the leader on the other side would have been given ample opportunity to tell us what the difficulties on his side were with the motion itself.

Senator Prud'homme: Is that a speech?

The Hon. the Speaker: I think that is an intervention, Senator Cools, and Senator Carstairs has asked for the floor.

Senator Carstairs: Honourable senators, Senator Kinsella began by indicating some concern about the motion to limit time on this debate, but Senator Cools is quite correct that he then

began to debate the principle of the bill. Right now we are dealing with why it is necessary to impose time allocation. That is what I would like to, and no, honourable senators, I will not take the 30 minutes that I am allowed to take.

It is very important, honourable senators, that we realize that thus far on third reading, 20 senators have spoken. That is a highly unusual number to speak at third reading on any bill. Today is not the first or the second or the third or the fourth or the fifth day of debate — it is the sixth day of debate. Five hours and seventeen minutes of actual speeches have been given for debate at this stage of the bill.

Ironically, last Thursday night, the bells rang for four hours, which was caused by the other side, in comparison to the two hours and thirty-one minutes that they allowed for debate.

Some Hon. Senators: Shame!

Senator Carstairs: In total, nine hours and seventeen minutes have been devoted to third reading of Bill C-36, including the speeches and the bell ringing.

It would seem only logical and reasonable to me that if honourable senators were genuinely interested in debate, they would not allow bells to ring for four hours. They would get on their feet, and they would, in fact, speak.

In the preceding five sitting days, the senators on the other side have proposed the adjournment of the debate seven different times. On Friday, December 14, 2001, debate could have continued, but the opposition whip deferred the vote on Senator Lynch-Staunton's motion in amendment to Monday, December 17, therefore effectively shutting down the debate in this chamber.

• (1320)

What we are proposing by this motion is to add up to six more hours to the debate, which means that if each senator had 15 minutes, 24 more senators could speak. If honourable senators look at the numbers from the recorded division this morning, they will notice that the other side had 23 senators, I think, at maximum numbers. Twelve Conservative senators have already spoken to the bill at third reading. Of those 12, nine are here today. Presumably, they have put on the record when they want. That leaves a maximum of 14 Conservative senators present today with the right to speak to this bill.

I say get on with it. Let us have the speeches. Let us move the time allocation motion. Let us begin the actual debate on the substance of Bill C-36.

Some Hon. Senators: Hear, hear!

Senator Di Nino: Honourable senators, of all the proceedings in this chamber, this is the one that disturbs me most. My friend, Senator Kinsella, has called this measure a "guillotine." It has been called closure and time allocation. I call it the muzzling of Parliament.

What is interesting is that in the first speech I gave in the Senate some 11 years ago I said something similar. I have been tremendously impressed with the men and women in this chamber, for they are men and women of great ability and great intelligence. They are men and women of unique and valuable experiences and talents. They are men and women for whom I have high esteem. I refer to the people who sit next to me and those who sit across from me.

It is disturbing to see that what Andrew Coyne wrote about in a *National Post* article of November 18 may very well be happening before our eyes. His article talked about the death of Parliament or, perhaps, the death of democracy. I should like to read a few comments in that regard. In talking about Mr. Gray's defence of the government's use of the guillotine in the other place, Mr. Coyne quoted Mr. Gray as follows:

"Parliament is not only a place for debate, it's a place for taking decisions."

I agree with him. Mr. Coyne continued:

But the truth is that it is neither, and hasn't been for some time. Having had little or no opportunity to debate the legislation or to propose amendments, government MPs will stand in their place when called today and vote the bill through, in strict obedience to the party line, as they always do.

Closure and party-line voting are objectionable at the best of times. But to apply these parliamentary tourniquets to legislation such as this — hasty in drafting but permanent in effect, with all manner of implications for the rights of citizens and all sorts of potential for abuse — is simply beyond belief.

I wish to read to honourable senators some of the comments made by other Canadians who care. Patricia Winston from Montreal wrote:

The more we learn about this Bill, the more it becomes clear that its measures, hastily conceived to address an uncertain but emotionally charged threat, may very well represent a deeper threat themselves. Civil rights and liberties have been hard won, and they represent the struggle of many generations; and so to witness the first signs of an impeding retreat is very worrisome.

In an article in *The Toronto Star*, which in the Toronto area, for those who do not know, we call the Liberal propaganda organ, it was stated that Bill C-36 will give:

unprecedented powers to some cabinet ministers arbitrarily to impose interim orders that have more in common...

The Hon. the Speaker: Is the Honourable Senator LaPierre rising on a point of order?

Hon. Laurier L. LaPierre: I thought His Honour said that we were to speak on the Senator Robichaud's motion and not on the

[Senator Di Nino]

bill itself. Am I wrong? If I am wrong, I shall sit down and apologize. This honourable senator is certainly speaking about Bill C-36.

The Hon. the Speaker: Honourable senators, I have indicated that we have a great deal of leeway in these matters; I do not find Senator Di Nino off topic.

Senator Di Nino: If the Honourable Senator LaPierre wishes to speak, why does he not wait until I am finished? Please give me that courtesy, and I will do the same for you.

Senator LaPierre: I listen to you with great interest.

Senator Di Nino: Thank you. I appreciate that.

Let me read once again that quote from *The Toronto Star*. The article states that Bill C-36 will give

unprecedented powers to some cabinet ministers arbitrarily to impose interim orders that have more in common with martial law and banana republics than Canada's democratic traditions.

Mr. Telegdi, a Liberal member of the other place, said the following:

...the legislation we are debating gives extraordinary powers to the solicitor general, the courts and the police. It must contain at the very least a feature of accountability. I notice that the motion for a parliamentary oversight committee will not be voted on since it was ruled out of order. I regret that because the amendment would have protected one of our most basic tenets of democracy: accountability to this Chamber. This accountability is absolutely necessary because without it we lose an essential element of the democratic process. If we fail to protect the process, we will lose it.

Mr. Telegdi spoke in this manner because he comes from a communist country, where experience taught him something that, perhaps, most of us were not subjected to.

Honourable senators, Canada has attracted millions of people from all over the world. One of the reasons people come here, as my mother, father and I did in 1951, is that we respect democracy and the democratic process. Closure does not respect democracy, nor does it respect the democratic process.

In an article in the *Ottawa Citizen* on December 15, it was reported that a Jane Russow, former leader of the Green Party, was put on what is called a "threat assessment list" by the RCMP, who were concerned about what her actions would be during the APEC demonstrations. The article says, in part, the following:

The allegations come as Parliament considers legislation that would make it easier to eavesdrop on, arrest and question suspected terrorists. Some critics fear the new laws would be used to crack down on anti-globalization activists and other demonstrators, a charge the Liberal government denies.

While they may deny, we are starting to see some of the results, even though the law has not been passed.

On December 15, in an article in the *Montreal Gazette* entitled "Canada cracks down," we are told that 10 people are now being held as security risks.

The criticism of this bill and of what is happening is widespread. In my opinion, it will become even more so. Almost everyone in the field of law and in the business of looking out for our interests is opposed to this measure.

Let me refer once again to the article in the *Montreal Gazette*. For those who think that profiling is not happening, let me refer to a statistic that article refers to. Of the 10 people detained for security reasons, there are eight Arabs, one Sikh and one Tamil.

I shall conclude, honourable senators, with some comments about why I think what we are doing is wrong. To do that, I wish to read from an article that appeared in the *Kitchener-Waterloo Record*. It states:

If there was ever a time Canadians needed the sober, second thought of their Senate, it is now. If there was ever a golden opportunity for this same Senate, so ignored, so maligned, so dismissed as useless over the years, to prove that it is worth the cost of keeping its chambers open, it is at this moment as it examines, debates and seeks to improve the anti-terrorism bill, C-36.

For the good of the nation, this dangerous piece of legislation, conceived in panic, written in unseemly haste, delivered in the clenched fist of a majority government, should be rejected in its current form and returned to the House of Commons with the terse command: Fix it.

• (1330)

Mr. John Reid, Canada's Information Commissioner, said that the bill gives the government the power to muzzle the release of information that could be politically sensitive.

The Hon. the Speaker: I must advise Senator Di Nino that his 10 minutes has expired.

Senator Di Nino: Thank you.

Senator Carstairs: Question!

The Hon. the Speaker: Is the house ready for the question? Is there a senator on the government side who wishes to speak?

Hon. J. Michael Forrestall: Honourable senators, I wish to participate in this debate. My opposition to closure is well known to those who know me well. I will not address the bill directly at this time, but I am uncertain as to whether I will have an opportunity to speak to it for two or three minutes, no more, at a later date and before the question on Bill C-36 is put to the chamber.

Honourable senators, 31 years ago last October, I made a dreadful mistake in public life. For those who may be interested, I have been in public life for about 47 years, one way or another. In company with my colleagues who at the time believed that there was apprehended insurrection in our nation, I made an extreme error in judgment.

I learned shortly afterward that, of the 500 or so individuals who were incarcerated under the extraordinary power that we gave to government under the War Measures Act, virtually none of them was charged. I know of families that did not know where their spouses, sons, sisters or brothers were. Counsel was unable to assist these people, and I know that their rights as Canadian citizens were seriously affected.

I believe Bill C-36 is excessive.

Honourable senators, in all my years in public life, from November, 1957 to this day, the man who was my mentor was The Right Honourable Robert L. Stanfield. He said that the War Measures Act was the worst, not the only, but the worst mistake he ever made in public life. Honourable senators, I will not make that mistake again because I made it then. I have an opportunity to apologize to Canadians who were seriously affected by that decision 31 years ago, and I will not lend support to proposed legislation that is excessive and intrusive.

To date, we have heard nothing more than an appeasement from our friends to the south. I am not soft on terrorism, but I am very concerned about the rights of Canadians. I will vote against this bill and I will do so, not with a heavy heart, but with a sense of forgiveness.

Hon. Terry Stratton: Honourable senators, I do not usually speak to issues such as this if I am not directly involved. However, this bill disturbs me greatly, even though I am the epitome of a WASP. I stand before you with all the credentials of a WASP in that I ask myself: Why should I worry about it? Honourable senators, I worry about minorities. I am concerned about the fact that this is aimed directly at people whom we all know and like, and who are directly or indirectly targeted as a result of what happened on September 11.

Honourable senators, I should like to tell you about my high school days when I knew new a young Japanese boy who became my friend and who later became my business partners. As a matter of fact, two Japanese individuals became my partners in business. I want to relate their story to you because of what happened to them during the Second World War. I will never forget their story.

These two youths came from happy, contented families on the West Coast. Their parents were fishers, and they were living a good life. As a matter of fact, the family of the individual to whom I referred has one more generation in Canada than I have. From that historic fact, I would view him as being as Canadian, or more Canadian, than I am.

As honourable senators all know, the government marched up to them and said: "You must leave this place and all your lands and holdings will be confiscated." That was a really tragic event. One of the youths ended up working on a farm outside Steinbach, Manitoba. In his own country, he was treated as a serf.

Kids pay little attention stories like that, but when he told me about it, I was appalled. Every minority sitting in this chamber and right across Canada has to think of that story and of what could happen — the internment and the conditions that those people faced. Fortunately, my friend was young at the time and did not have to restart his life because it had barely begun. In the end, he viewed it as beneficial, because otherwise, he would still be a fisher on the West Coast. His family had everything taken from them, and they had to start over again.

Honourable senators, when we realize the enormity of that, and when we understand why that happened, we say that it could never happen in this day and age. I say: Wrong. With this bill, it can happen again. If I were a minority in Canada today, I would be upset and concerned about Bill C-36, because I would perceive it as targeting me, perhaps not directly, as a minority. That fundamentally bothers me, and I simply cannot accept it on the basis of Canada's history and on the basis of what I learned about and lived through.

Honourable senators, think about that when you are voting. I, as you know, will vote against the bill based on that simple, factual story.

Recognize that, in today's times, it is not too great a problem — except for a significant few who will be put away and who will disappear. However, if we get into much more difficult times than now, you can rest assured that what will happen will be far nastier than what you and I think could happen today.

• (1340)

I recall the vote on the Charlottetown Accord. There was a referendum. Suddenly, before we knew it, the racism number was being played. It certainly was obvious at meetings in my part of the Prairies. Honourable senators, racism lies just below the surface, waiting for an opportunity to emerge. My concern is that passage of this bill will allow such racism to emerge much more quickly.

Honourable senators, there must be conditions attached to the implementation of this legislation. We should insert a real sunset clause. The last thing any person wants is to have his or her rights taken away and marched off to an internment camp with no recourse. My fear is that that could happen. We are told that that will not happen, but I fundamentally disagree with that.

Senator Di Nino: I should like to ask a question of Senator Stratton. At the beginning of his remarks he said something that caught my attention. He referred to himself as an Anglo-Saxon and he asked why he should care. What is happening in this

country today is a beacon to the world on how people can live together without all those frictions that are created by race, colour and creed, because of intermarriages and so forth. I am sure that Senator Stratton has experienced this. He may be an Anglo-Saxon, but his grandchildren, great-grandchildren, son-in-law or daughter-in-law through marriage would make those generations coming after him not such a recognizable individual group of people as we may have had in the past. Would you not agree with that?

Senator Stratton: Honourable senators, I am the definition of a WASP, although I claim Celtic roots. For the most part, my children and grandchildren are blond-haired and blue-eyed.

Senator Di Nino: For now, anyway.

Senator Stratton: Yes, for now. For their sake, I hope that will happen in the future and that they do not have to live with this dreadful fear I have talked about.

[Translation]

Senator Prud'homme: Honourable senators, I was very surprised when I read News Release No. 164 issued by Canada's Department of Foreign Affairs on December 14, 2001:

[English]

"Canada reports to UN Security Council on counterterrorism measures."

[Translation]

Under UNSC Resolution 1373, Parliament reports to the committee in New York, which is responsible for anti-terrorism and which monitors the implementation of the resolution.

I will go directly to this paragraph and tell you why we are making a serious mistake in a country that is recognized as a democratic one throughout the world. The minister, Mr. Manley, was very pleased — and I am talking about an excellent friend — to report that Canada has taken measures since September 11, and even prior to that date.

I can read it to you in English, because I have both versions with me. It deals primarily with some clauses of Bill C-36.

[English]

...the Public Safety Act (Bill C-42) and the Act to amend the Aeronautics Act (Bill C-44), as well as Canada's implementation of the United Nations Suppression of Terrorism Regulations. Canada will submit a further report to the Committee once the legislation now before Parliament has been passed.

However, if you read that communiqué, this must be done before December 27, 2001.

[Senator Stratton]

[Translation]

I have just discovered the reason for this panic. Why must we use closure so quickly as possible? It is so that Canada can boast to the United Nations and say: here, all the measures we took have now become law. We imposed them on a refractory House of Commons. We imposed them on a Senate committee. We can now tell you that the work was done properly.

I watched what happened when the House of Commons sent us this bill for preliminary study, under Senator Fairbairn's able leadership. Since I attended every meeting, or almost, I came to notice the Liberal membership on the committee. There were seven Liberals under the able leadership of Senator Fairbairn, five Conservatives and one independent, namely me, who did not belong to an organized political party. I was the thirteenth member of a committee of twelve. They did a remarkable job.

I still remember the strength of character displayed by Senator Bacon. She was clear, concise and accurate when the time came to discuss the sunset clause. She does not tend to repeat herself, as I do. She thought about the issue and she was categorical.

Something remarkable occurred afterwards. When the bill was sent back to the other place, the same committee met again. To my great surprise, four of the seven Liberal members on the committee had been changed. I still do not know what to make of this. These people had done their homework, they had thoroughly examined the bill when the preliminary study was done, even before the legislation was submitted to the House of Commons.

• (1350)

These seven Liberal senators, after vigorous debate behind closed doors, were convinced of the need to present the report that was presented and adopted in this chamber.

The blade of the guillotine is falling again, at a different angle. I thought that this practice of wanting to change committee members whenever they were unfortunate enough to displease the party in office, the minister, the deputy minister or the whip, was in effect only in the House of Commons, which I left eight years ago already.

Today, the government is asking us again to pass this bill. While there is some hesitancy, we will not be taking the time required to reach a consensus and we will have to leave it up to the courts. As a matter of courtesy, I wish to point out that the Governor General will perhaps have a surprise when she comes to give Royal Assent later.

I will speak again at the end of the six hours of debate. I wish to record my profound disagreement with this decision to impose closure.

[English]

I say openly, in front of Senator LeBreton and other honourable senators who I have not consulted, that I would have preferred that we rise before Senator Robichaud had time to do what he was about to do, in order to show our immense

displeasure. By doing so, we would have attracted the attention of Canadians to the Senate. We would have calmly walked out of the Senate, not in the type of disgusting show that I witnessed when the GST was being debated in the Senate years ago, when any respect that Canadians had for the Senate was almost destroyed.

Honourable senators, that gesture could have been dramatic. Perhaps the leadership of the official opposition will consider my proposal when the time comes for third and final reading. I will be prepared not to use the speech that I have here. It contains excellent quotes from Canadians from every province who are begging us to reconsider — and I will not repeat what my friend, Senator Forrestall, said about the events of 31 years ago. I would hope that colleagues will reflect, but I am afraid it is too late.

Some Hon. Senators: Question!

The Hon. the Speaker pro tempore: Honourable senators, is the house ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: Will all those senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Will all those senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Pursuant to rule 40(1)(c), any standing vote requested in relation thereto shall not be deferred and shall be taken subject to the provisions of rule 66(1), which is a one-hour bell, unless there is an agreement.

Senator Rompkey: I believe there is agreement on a 15-minute bell.

Senator Stratton: That is agreed.

The Hon. the Speaker: Is that agreed?

Hon. Senators: Agreed.

The Hon. the Speaker pro tempore: The vote will be held at 2:10 p.m. Call in the senators.

• (1410)

[Translation]

THIRD READING

Motion agreed to on the following division:

On the Order:

YEAS
THE HONOURABLE SENATORS

Bacon	Kenny
Banks	Kirby
Biron	LaPierre
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Milne
Cook	Moore
Cools	Morin
Corbin	Pépin
Cordy	Phalen
Day	Pitfield
Fairbairn	Poulin
Ferretti Barth	Poy
Finnerty	Robichaud
Fraser	Rompkey
Furey	Setlakwe
Gauthier	Sibbeston
Grafstein	Stollery
Graham	Taylor
Hervieux-Payette	Tunney
Hubley	Watt
Jaffer	Wiebe—47
Joyal	

NAYS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Murray
Bolduc	Nolin
Buchanan	Oliver
Di Nino	Prud'homme
Doody	Rivest
Forrestall	Spivak
Johnson	Stratton
Kinsella	Tkachuk—20

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

Hon. Gérald-A. Beaudoin: Honourable senators, Bill C-36 contains a number of shortcomings, including one very significant one. This shortcoming could imply that a person would be found guilty of facilitating an act of terrorism in the absence of *mens rea*. In order to commit a crime, in criminal law — and this is something we learn in every faculty of law in first year — there must be two things: the *actus reus*, a crime committed, and the *mens rea*, the intent to commit a crime.

As the Canadian Bar Association said in its brief on November 27, 2001, “full *mens rea* should always be a requisite element,” that is, the intent to commit a crime.

Chief Justice Lamer, in a dissenting opinion, but not on this issue, in *Bernard* (1988) gave an explanation of the fundamental nature of the *mens rea* requirement.

To warrant the condemnation of a conviction and the infliction of punishment, one who has caused harm must have done so with a blameworthy state of mind. It is always for the Crown to prove the existence of a guilty mind beyond a reasonable doubt.

In other words, “suspicion” is insufficient grounds to arrest someone. That is why, honourable senators, we have a duty to correct this flaw in Bill C-36 and to provide for a complete *mens rea* where the commission of an act of terrorism is concerned.

[English]

MOTION IN AMENDMENT

Hon. Gérald-A. Beaudoin: Therefore, honourable senators, I move, seconded by Senator Andreychuk:

That Bill C-36 be not now read a third time but that it be amended in clause 4,

(a) on page 29, by replacing line 40 with the following:

“83.19 Every one who knowingly facili-”;

(b) on page 30, by deleting lines 1 to 9.

That is the line that says:

(2) For the purposes of this Part, a terrorist activity is facilitated whether or not

(a) the facilitator knows that a particular terrorist activity is facilitated;

(b) any particular terrorist activity was foreseen or planned at the time it was facilitated; or

(c) any terrorist activity was actually carried out.

Thus, a person may be convicted even if there is no *mens rea*, which means the intention to commit a crime.

• (1420)

The Hon. the Speaker: The house has heard the motion. Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: There will be a division on this amendment as so provided in rule 39.

Hon. Terry Stratton: With the agreement of the house, we should bundle the vote with respect to Bill C-36 and the amendments.

The Hon. the Speaker: I thought we had agreed to that already. Out of an abundance of caution, let us agree to it again. Is that agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Laurier L. LaPierre: Honourable senators, I rise to speak on the amendment to Bill C-36 by the Honourable Senator Murray and seconded by the Honourable Senator Buchanan.

I shall preface my remarks by stating that I think that the only time in my life that I did not oppose transfer, deportation or the application of stringent laws was in the First World War — I will not yet born — when the Ukrainians were deported. However, the secret was kept. In 1980, when Patrick Watson was chairman of the CBC, a young Ukrainian had just learned from his grandmother that the family had been deported. It had been kept a secret because they were so ashamed of it.

I protested the deportation of the Japanese and was suspended from grammar school for a week. I also protested at the end of

Pacific Street in Sherbrooke, where Drummond and Pacific come together. There was a camp of Germans, Austrians and other so-called undesirables. They were in Sherbrooke, and they were used by the government to do various things. I protested against that. As well, honourable senators, I certainly was not in favour of the War Measures Act.

In preparation for this, I must tell you that my inclination was to vote against this bill as it ran so much counter to what I think. However, I sat down and looked at the anti-terrorist bills of other democracies that are not so close to the target that is now constantly everyday resident to us, which is the United States of America. I looked at the terrorist bills of Israel, Germany and France. I have also looked at the bill of the mother of Parliament, where all the liberties of the parliamentary system reside, as I am told by everyone — the United Kingdom. Their terrorist bill is much more stringent than ours.

Of course, Great Britain has a long history of terrorism, coming from the creatures of Northern Ireland associated with that mouthbag of platitudes, Jeremy Adams, and the other incarnation of the devil, Ian Paisley. Great Britain has had experience with that. I understand that. I also understand that I live next to the United States and that I must not take any chance or any risk.

Is the bill protective enough? I would have preferred a sunset clause from beginning to end. However, I am satisfied that two of the most stringent items in this bill are now sunsetted.

I do not attach much importance to review three years down the road, five years down the road or a year down the road, because I know enough about that. However, I do not share the pessimism of many who think that this will be carte blanche for the development of a nasty racism in our country and of targeting a considerable number of citizens. I trust the validity, the compassion and, above all, the determination to diversity that the Canadian people have made a condition of their national existence. I trust that.

I am opposed to the motion of the Honourable Senator Murray. I do not want to take refuge behind the cloak of an official that I do not control in the final analysis. I do not want to take refuge for the application and oversight of this bill to someone I do not control.

I want, and I repeat again, the Senate to become the overseer of this legislation through all kinds of processes. Let us develop a Web site of astonishing attraction that will bring people to it, where they will be able to describes and state what ails them about it. Let us have chats on this Web site. We can staff them. There are close to 100 of us. Let us hold public meetings and public forums across the country.

Let us put ourselves in the centre of this entire affair so that, in the final analysis, Canadians will say, "We have the Senate to see to it that all our rights and liberties are maintained, in spite of the state of terrorism and the action that had to be taken in order to protect our children and our grandchildren." We must act; it is not someone else who must act.

My friend Senator Prud'homme tells me all the time that over there they are told what to do. That was then; this is now. I do not care. I shall not stand here and be told by Senator Carstairs what to vote for. I sit down, I think and I act accordingly.

I want this bill because it will protect us. However, I want to be part of the solution to whatever danger it holds. You may smile, you may laugh, you may take refuge in Aristotelian physics, if you like. At the end of the day we will all be held responsible, whether we vote for it or not.

I suggest, therefore, that honourable senators vote for this bill and then set up a mechanism whereby we will fulfil our destiny by being responsible for our actions.

Vive le Canada!

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would the honourable senator accept a question?

Senator LaPierre: No, I have exhausted my wisdom, sir. Thank you.

Hon. Jeremiah S. Grafstein: Honourable senators, I, too, rise to speak on Bill C-36, and specifically Senator Murray's amendment. I shall be mercifully brief, as the debates here and in the other place have been reasoned, intense and most enlightening.

When we look out and survey today's geography on international terrorism, we discover there are 30 savage, raging so-called wars around the globe. Some observers have suggested that 28 of them are nourished and flourished in part by xenophobic fanaticism fanned by paranoid hatreds, where innocents are not out of bounds of decency but, rather, targeted as a daily routine.

Why? Ethnic cleansing is exercised all in the name of imagined palaces of purity. Down through the dusty corridors of history, even martyrdom is despoiled. Sainted martyrdom was always defined as an anathema to the annihilation of innocents.

The Geneva conventions, born almost a century ago, are now tattered by these asymmetrical atrocities whose mission is devoted to destroying civilizations, common values forged in blood and incorporated in the UN Charter.

Civic societies are targeted for terror. Our open, civic society, premised on pluralism and equality, falls prey to the tentacles of international terrorism, which deploys the modernity they abhor — modern networks and modern technology to take hostage and, worse, victimize our liberties at home and abroad.

• (1430)

How, then, can we support a sunset clause while there is a clear and present danger posed by international terrorism? If we

[Senator LaPierre]

could guarantee a sunset clause on international terrorism, we could invoke a sunset clause and cut down the generous and special police powers and ministerial powers granted under this bill. Regretfully, I do not believe that during the remainder of my term in the Senate I will be fortunate enough to see any respite in international terrorism or its global reach, the global networks that reach into the broad and dark corners of the earth.

International terrorism, which has pushed its most miserable militancy, mutilates moderates and degrades the human condition below the gradient of the "rule of law."

So here we are, honourable senators. We are left, therefore, to ponder excessive use, if any, of the generous police and ministerial powers, especially difficult to survey when the war against international terrorism goes underground once again, as it will and as it does, as it retreats from the headlines. Still, we will not be allowed any pause to root out these infected branches before they undermine and disorder the roots of our civic society and suffocate the oxygen of our individual liberties.

What are we, as parliamentarians, to do? What of our parliamentary surveillance of these generous police and ministerial powers? By amendment in the other place, the Attorney General and the Solicitor General must report — quantifying the use of these police powers annually by the quantitative and statistical reports — to both Houses.

At its inception, Bill C-36 included a three-year parliamentary review by both Houses through its committees. A committee of the Senate could be deployed earlier for further oversight, but, regretfully, past experience demonstrates to me that budgets, business and changing priorities too often crowd out the necessary. This leaves us in a rather tendentious and contentious position.

Reliance on the courts is neither wholly satisfactory nor salutary because many of us believe so devoutly in the separation of powers. A parliamentary officer, independent of government, would be preferable to demonstrate Parliament's external and eternal vigilance in protecting our civic society, especially in times of extremism and fanaticism. Hence, I will support Senator Murray's amendment, which is so carefully tailored to the proposal I made before the committee and which was approved unanimously by that committee. In so doing, of course I will support Bill C-36.

Hon. A. Raynell Andreychuk: Honourable senators, I have spoken to the general issues that have concerned me in Bill C-36, but obviously this is my final opportunity to put on the record other concerns I have about Bill C-36.

I continue to restate that the Government of Canada was aware of terrorism prior to September 11 and that there are many pieces of legislation that can go to support and secure us as a nation and to assist our allies. The government did act not only on Bill C-11 but also on the existing immigration bill to take further steps.

Throughout the study of Bill C-36 and Bill C-11, which have some companion issues, the issues again were resources and training. The government has, both after September 11 and in this recent budget, earmarked more money to do the job. The original issues for both CSIS and the RCMP were the fact that they did not have the proper manpower. In a recent RCMP statement to the press it was indicated that even with the increase of funds and due to the terrorism issue, they are directing their time, attention and resources to terrorism. Many other community issues that fall into the criminal sphere will go unattended unless there are further resources.

Honourable senators, we should not feel that Bill C-36 is the only issue to do with terrorism. We require a multi-faceted and multi-resourced response. Many of the pieces to that response were in place before September 11 and others were put into place following the tragic events of that day. Bill C-36 is but one of many pieces of legislation already on the books and some in the process of being placed on the books.

The haste with which Bill C-36 went through both the House of Commons and the haste of the process here in the Senate is regrettable. It is unfortunate that we are not taking more time to analyze the bill clause by clause because I believe that we could improve the bill.

I was pleased to hear Senator LaPierre speak about a sunset clause. However, his statements would have been more welcome had they been given at the beginning, when we were voting for a sunset clause because I, and others, would have accepted Bill C-36 with a sunset clause. The dilemma is that we do not have one on those issues that need a sunset clause and a re-evaluation. Therefore, we in this house must not trust the government to do the right thing, and we must exercise our responsibilities — that is, we must be a check and a balance on the executive. In that spirit, there are three things I wish to discuss.

First, I am still extremely worried about these so-called entities and how one gets on a list and how one removes oneself. Removal seems to be better because there is some judicial ability for anyone named, be it an organization or an individual, to clear their name. However, how does one find oneself on that list? The damage is done, as witness after witness told us. Anyone who has worked in and around criminal law will tell you that if you are accused, it is difficult to clear your name. It is difficult to clear your name in a community and in a job application. The taint follows you, even if it is not correct; that is, even if there is an admission later that there was no substance to the allegation. What marks Canada differently from other societies is that one individual counts. We do not always look to the collective good; we weigh individual rights against the collective good. We must be careful not taint one Canadian citizen unnecessarily.

While on the Human Rights Commission, I heard the horrific stories of individuals from other countries. The response from

those other countries was that that is the price the country pays. What has made Canada the country that everyone wants to live in — and certainly our citizens, and I am one, count ourselves grateful to live here — is the fact that each of us counts. Each of us has the tools to defend ourselves. I am afraid that this bill lessens that ability. Again, it is not a question that such defence tools should be lessened, but do we have the right balance? In my humble opinion, that balance has not been struck. We have not passed the test. We have taken a power and said, "Trust me, and we will correct it if there is some injustice." I do not think that is the way a mature Parliament and mature society should address itself.

• (1450)

As well, in the haste to look at other clauses, we have not considered the fallout on charities. Canada prides itself on the volunteers we have, the charitable organizations and the non-governmental activity to which we subscribe. In fact, we spend many of our aid dollars to help NGOs around the world. We heard evidence before the special committee that there is a chill effect going through charities and there will be less likelihood of people donating and being involved in charities which deal with overseas issues and especially as they relate to cultural groupings. I think that is unfortunate, and we need to look at that again.

Honourable senators, at this time I wish to turn of the definition of "terrorist activity." I am supportive of the definition which states:

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

The bill then enumerates all of the United Nations conventions. I believe that those definitions are appropriate, although as an aside, I muse as to why no one in the United Nations system has been able to come up with a definition of terrorism.

However, we include in the bill another terrorist activity. The proposed section 83.01(1)(b)(i)(A) reads:

in whole or in part for a political, religious or ideological purpose, objective or cause.

In others words, we are saying that motive counts: religious, ideological or political. I do not believe that religion, ideological or political purposes should be included in this proposed section, particularly since we try to separate religion and state. Here we are putting them side by side. As prosecutors pointed out to us, this will restrict the kind of terrorist activity an accused person can be charged with in Canada because it will be based on a religious, ideological or political purpose, and we will have to prove the motive. How do you prove motive? It is most difficult. What about the motive of drug dealing or international crime or human trafficking or just plain greed?

Prosecutors have said we have narrowed our ability to attack terrorism because we have put this proposed section in. Criminal law is not about motive; it is about intent. The other proposed sections flow very deliberately and correctly and point to intent, and we know how to prove that. I do not have the time to go into the criminal aspects of this, however. I think it is inappropriate, because when one person is charged because of the motive of Islamic faith, then everyone who has that faith feels the brunt of that issue. When everyone feels something about a political cause, what happens?

Honourable senators, I wish I had more time. Since this bill is so important, I hope that all of you have read the committee proceedings where we dealt with this issue in detail. It seems to me that this is the most fundamental issue, and that this proposed section should be removed to protect society, to give us security against terrorism but at the same time diminish the effect that we would have indirectly.

MOTION IN AMENDMENT

Hon. A. Raynell Andreychuk: Honourable senators, I move, seconded by Senator Beaudoin,

That Bill C-36 be not now read the third time, but that it be amended in clause 4 by replacing line 46 on page 13 and lines 1 to 4 on page 14 with the following:

“(i) that is committed in whole or in part with the”

The Hon. the Speaker: The house has heard the motion. Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Will all those in favour of the motion in amendment please say “yea”?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will all those opposed to the motion in amendment please say “nay”?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the “nays” have it.

And two honourable senators having risen:

The Hon. the Speaker: The division will be taken in sequence with all of the other votes on Bill C-36 as provided for in the order of this house.

Senator Andreychuk: I believe I still have some time. I want to make one other point.

[Senator Andreychuk]

The Hon. the Speaker: Does the honourable senator wish to speak to her amendment?

Senator Andreychuk: May I continue?

The Hon. the Speaker: I am reminded that the Honourable Senator Andreychuk should have been permitted to speak before the question was put.

Is leave granted to allow Senator Andreychuk to speak to her amendment? The question has been put and disposed of, subject to a vote. Is it agreed that Senator Andreychuk may make additional comments?

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe there would be consent to allow the Honourable Senator Andreychuk to finish her remarks, using the time remaining from her original speech.

[English]

The Hon. the Speaker: Senator Andreychuk may continue for the balance of the time she would have had, had she continued speaking for 15 minutes.

Senator Andreychuk: I understood I had to wait for the vote before I could continue. That is my understanding from what happened this morning.

Honourable senators, the fact is that we have been in lockstep with Americans. We share this continent and we share their concerns, as they should share ours. I have no difficulty with being responsive and reactive to their issues, and I trust that they will be to ours.

What troubles me about our definition of “terrorist activity” is that we have borrowed it from the British. The Americans do not refer to religion. In fact, they painfully, in their legislation, point out that no group, and in particular Muslims and Arabs, should be targeted in any way, and that it will not be tolerated. We have borrowed a section from British legislation and included it in this bill. With the greatest of respect, they have a long history of a Protestant-Irish-Catholic-Northern Ireland situation. It is, therefore, their right to determine their definitions, but for us to adopt those definitions in our laws, when so much of what we are doing is in lockstep with the United States, seems inappropriate, unnecessary, and targets minorities.

Minorities continually remind everyone that security comes when the minority's security is in tact. Once a minority feels vulnerable, we are all vulnerable. The action of our Canadian multicultural society must be to say to all citizens, “You count, you count equally, and you will not be in any way targeted or tainted.”

Honourable senators, I believe that Bill C-36 unnecessarily contains subtle wording that makes minorities ill at ease. Minorities come to this country to escape excesses. We must not undermine their security when they come here. They come for something better. When a policeman knocks on their door, they are unnerved. Many minority members of our community who have been here for 30 or 40 years still feel that way. Perhaps that explains why Mr. Telegdi spoke against Bill C-36 and why we have been inundated with letters from minorities stating: "This must not happen to us."

• (1450)

We should, in fact, amend this bill. We should adopt a sunset clause, but I make an appeal that we not forget the minorities in our administration of this proposed act. With respect to all those senators who say that some role must continue, I believe we should have been a sunset clause and an oversight role. If not, I ask honourable senators to indicate how we will protect Canadians.

Hon. Noël A. Kinsella (Deputy leader of the Opposition: Does the honourable senator think she will find some evidence to support her argument that the visible minority community in Canada has every reason not to trust, as Senator LaPierre is prepared to do? If one examines the annual report of every Human Rights Commission in Canada, is it not true that one finds in those reports hundreds of complaints of racial discrimination that the Human Rights Commissions have investigated? Is that not hard evidence that we ought not to be trusting?

Senator Andreychuk: I thank the honourable senator for that question. We have human rights laws to erect good fences between neighbours so that we act and respect each other. However, as we were told by the Canadian Human Rights Commission and other commissions in our human rights study, there is also a need to educate in Canada and around the world. Each new wave of immigrants that has come into Canada has had to find its way into the fabric and mosaic of Canada. Intolerance does not always come from bigotry and prejudice. It comes from misunderstandings and lack of education.

The Hon. the Speaker: Senator Andreychuk, I am sorry to advise that your 15 minutes plus a minute have expired.

Senator Kinsella: We are asking for leave for a few more minutes. Let us not stop her in mid-answer. For heaven's sake, the guillotine is on. We have up to six hours and we have used only one. Surely we could be given a little consideration.

The Hon. the Speaker: Senator Kinsella's microphone is not on. I should explain why I stood when I did. I had to interpret Senator Robichaud's description of leave, which was that the honourable senator should have the balance of time remaining to her to complete her remarks and deal with questions and comments. That is why I interrupted when I did, honourable senators.

Is Senator Andreychuk asking for additional time?

Senator Andreychuk: Just to finish two sentences.

The Hon. the Speaker: Is leave granted, honourable senators?

[Translation]

Senator Robichaud: Honourable senators, under the circumstances, we will allow Senator Andreychuk one more minute to respond to Senator Kinsella's question.

[English]

Senator Kinsella: Honourable senators, on a point of order, we are under the guillotine. We know when this debate will end. We are trying to put a few last points on the record. What is the other side afraid of? Let Senator Andreychuk answer these questions. Let us have a few more moments with her.

[Translation]

Senator Robichaud: Honourable senators, we merely want the debate to continue. As the opposition has pointed out, there is limited time and we would like all honourable senators who wish to speak to have an opportunity to do so. As the Honourable Senator Andreychuk had used up all of her speaking time before putting the motion, we divided her speech in two. By allowing her to conclude, we are showing considerable flexibility.

[English]

The Hon. the Speaker: Senator Andreychuk, please conclude your answer.

Senator Andreychuk: Honourable senators, we live constantly on our guard to ensure that we treat all people in Canada properly, and that is why we have a host of human rights and civil liberties mechanisms. We must not short-circuit them because it has taken years to build them, and they have a place of pride in Canada.

This bill has a number of points that seem to hit minorities unnecessarily. They are in the definition of the charge of terrorist activity and the definition going to charities and entities. These are not necessary, if our target is terrorists. The blanket is too wide and we should reconsider.

Hon. David Tkachuk: Honourable senators, I spoke to Bill C-36 with respect to the first amendment on the sunset provisions, and I was rudely interrupted. I should like to finish the speech for the record.

I served on the committee that studied this bill, and I wish to thank Senator Fairbairn and Senator Kelleher for their chairmanship of the committee. I have been chairman and deputy chair of committees, and I was particularly impressed with how we all felt that we were always treated fairly. Everything went exceptionally well, and I was impressed at how little rancour there was in the room. We all agreed, but when we got here, no one agreed to anything. We do not quite understand that. However, as far as the committee proceedings are concerned, it was a pleasure to work with everyone there, including both sets of Liberals that participated on both ends of the committee study.

Instead of a coherent plan to fight terrorism, we have before us this bill, and instead of a plan to make Canadians safe and secure, this government is attempting to pass into law draconian legislation that will make necessary and temporary powers a permanent part of our social fabric. We have reason to be suspicious.

While accepting the concept of sunset provisions in the committee, when we got to the Senate chamber here, the sunset provisions were changed in the House. We now have a resolution that everyone on the government side supports, but it is not a sunset provision at all. It is simply a resolution. There will be no debate. There will be no committees. There will be no opportunity for the public to participate. There will be no sunset of the original law. We simply have a resolution put forward by a majority government and passed by both Houses with no participation by the Canadian people.

With actions such as those, it is no wonder that we on this side of the house fear that Parliament will protect the rights of Canadians, that the Senate will somehow protect the rights of Canadians, when we know what a whipped majority does with the rights of Canadians. We are experiencing it now under Bill C-36.

As the Liberals are finding out, and as they found out following the adoption of Bill C-68, the gun registration bill, legislation by itself does not solve problems. Registering firearms did not solve the problem of violent crime, as we were told by the Minister of Justice at the time. It only created a bureaucratic quagmire that has cost the taxpayer over \$500 million to date, with no end in sight. Bill C-68 has put innocent Canadians on the defensive. I have heard that many, probably thousands, will not comply and that the government has downsize its estimate as to the amount of long guns available in Canada.

• (1500)

We remember the original scare tactics. We were told that there were 12 million unregistered long guns in this country. We are now told that the figure is 2 million, and it may have been estimated to be less than that so that the percentages look good.

I keep hearing about access to the courts. I have news for honourable senators: People do not like to go to court. I know there are a lot of lawyers here who say that the Charter will protect us, the courts will protect us. People do not like to go to court. People in Yorkton are not saying: "Oh gee, the Charter of Rights will protect me. I will not worry about those police." I do not think so.

This is an affront to the responsibility of Parliament. This is our responsibility. In everyday life, people do not want to go to court. They expect parliamentarians to protect their rights; they cannot afford to go to court. If we fail in protecting their rights, as we are surely doing with Bill C-36, then the courts by default or neglect become the corridor of last resort.

[Senator Tkachuk]

Surely, the courts are not there to protect us from Parliament. The courts are there to protect us from our excesses in Parliament.

As a non-lawyer, I see the law in much more general and philosophical terms. The details sometimes escape me, because I am not learned or studied in its past application and interpretation. We all know that we live by it and certainly either experience or observe its consequences.

In committee, I was struck by how many senators seem to rely on the Charter of Rights as the bulwark to protect us from our own intransigence. They should all read the constitution of the former USSR. At face value, you would think that all those artists, writers and ordinary citizens stuck in gulags, mostly for saying and thinking about notions of democracy and freedom, deserved to go to prison. Their constitution guaranteed every right imaginable, including freedom from hunger, as long as you wanted to stand in line at 30 below zero in the streets of Moscow and other villages around Russia. It guaranteed freedom and the right to work, as long as you picked up the teaspoon or the broom that the government, at the point of a gun, told you you had to use. Those in power and those governed in that country had lost respect for the law. They had great laws. Great rights were guaranteed in their constitution. Its implementation and interpretation were used not for justice for its citizens, which is why we are here, but rather as an ally to maintain the dominance of the ruling party, which in that case was the Communist Party.

The law, as far as I know, as a non-lawyer and as a parliamentarian, needs respect. Thus, the rule of law is sacrosanct.

In the Prairies, I witnessed a disregard for the gun registration bill. Once people suspect that it is not themselves being protected but that, for the sake of efficiency and expediency, their rights have been sacrificed, there will be no revolution in this country, just a slow erosion of the rule of law. We will not even notice it. We will just begin to accept it. We have history to teach us that that is exactly what happens. It is always men of good faith and parliamentarians saying: "Do this. Everything will be fine. You can trust us. Everything will work out." It just happens, and we all know that it happens.

They will care less for the concept of the rule of law. Once the state is not on their side, the people will take matters in their own hands. This is stuff we understand as politicians because this, frankly, is the essence of politics. That is why we are here, to protect them, not us.

Honourable senators, I intend to vote against this bill, hoping that I am wrong about my fears and never having to say "I told you so."

Hon. Marjory LeBreton: Honourable senators, I have sat in my seat this entire day because I want to be able to reflect on this day after the weeks and months have gone by.

I am terribly troubled by Bill C-36. Like Senator Andreychuk and many of my colleagues, I could have supported it had there been a proper oversight provision and a sunset clause.

Like my colleague Senator Forrestall, I happened to be around here in the early 1970s. To leave my office on the fourth floor of the Centre Block, I had to step over a young corporal who sat at my door with a machine gun lying across his lap. At the time, I worked with Mr. Stanfield. Public opinion was incredible during the October Crisis, similar to what we have been witnessing as a result of the horrific acts in New York, Washington and Pennsylvania on September 11.

Horrific acts took place in the province of Quebec, with the kidnapping of Mr. Cross and the murder of Mr. Laporte. I remember the public saying "Do something." They were panicking. The government of the day and the Prime Minister brought in the War Measures Act. Of course, we are all familiar with the famous "Just watch me" quote of Prime Minister Trudeau. In two years, just-watch-me just about watched himself get defeated out of government. In a short two-year period, public opinion had turned against the government.

Senator LaPierre says that he trusts the system. He asks us in the Senate to act as the oversight. That is a very nice concept. However, if Senator LaPierre believes that he can convince his colleagues of that he must also believe in the tooth fairy.

I was also struck by Senator Carstairs' admonishment of those of us on this side for what she thought was a rather lengthy amount of time for this debate. She talked about how many times the bells rung several nights ago. Just making such a statement is an affront to democracy.

We on this side fought the good fight. I am standing here because it is my duty to express the thoughts of the hundreds of people who have e-mailed me and written to me on this matter.

Honourable senators, I am very proud of my colleagues on this side of the chamber. In committee, as well as here in this chamber, they have conducted themselves in a very constructive way. We have always been a constructive opposition. We have never been an obstructive opposition. The ringing of the bells and votes are democratic procedures of this chamber.

We have not gone around blowing horns in the ears of senators opposite, or blowing kazoos in their faces. We have not had senators starve themselves on benches outside the Senate to make their point. Those acts are the reason the Senate fell into such disrepute. We have such a bad reputation because people remember and think about those acts. We on this side at least must give ourselves some credit for having tried.

We can count. There are 60 senators opposite and there are 30 of us, along with 5 independents. I thank the independents for supporting us on this.

I am like Senator Tkachuk — I hope I will not be able to say "I told you so." I hope I am wrong about this bill, but I believe that in a very short period of time the Canadian public will be very concerned about what they have seen happen in this Parliament. I do not think they will like what they see.

• (1510)

I find myself wondering how many times Parliament has to make such a terrible mistake before the public finally wakes up. Let us consider the history of this very institution. Boatloads of Jewish people, who came to our shore seeking refuge from Nazi oppression, were sent back to certain death; we interned the Japanese; we invoked the War Measures Act; we trampled on the rights of students during the APEC meetings; and now Bill C-36 will give government, ministers and the police extraordinary powers. By the way, all of those acts happened under a government of the Liberal stripe. I have to ask myself: Are we not within our right to question some of these decisions?

Honourable senators, as the process went along I ran into the three young Muslim lawyers who appeared before the committee on Bill C-36, and I was most impressed. They were fine young men. I talked to them for 15 minutes on the street in front of the Victoria Building, and I was struck by what they said. They were all expressing the same concerns that we are trying to address in this chamber. My good friend, Mr. Goldy Hyder, is the Right Honourable Joe Clark's former chief of staff and a Muslim. He told me about some of the things that are happening in the community.

We are on the horns of a dilemma in that we all, of course, abhor terrorist acts, but we must balance our efforts to protect our citizens and the human rights of our citizens. Someone may say that we have two issues and one vote, and this is troubling, but sooner or later partisanship has to be put aside. I am as partisan as the next person, and I have supported the government on issues such as the gun control bill because I felt that it was the right thing to do.

Honourable senators, I urge you to at least acknowledge and care about what the witnesses said when they testified before the committee. I think of those young Muslim lawyers who appeared as witnesses. Senate committees are a good venue for witnesses to express their opinions, and our witnesses are right to think that their evidence will make a difference to the outcome of this bill. Let us be honest with them at the beginning and tell them that they are wonderful witnesses; that we have read their briefs; that we agree with everything they have said; but that what they have said will not count, and we do not care. That is the message we are sending to them.

Honourable senators, I did not have a vote during the enactment of the War Measures Act because I was a staffer then. However, I do remember Mr. Stanfield being railroaded by his caucus into supporting it because they believed that public opinion was so strong that we would be committing political suicide to do otherwise. As my colleague, Senator Forrestall, said: It was a decision that Mr. Stanfield regrets to this day.

I will vote against Bill C-36. As Senator Tkachuk said, I hope I am wrong, but I rather think that I will not be wrong about this: This government will rue the day they enacted Bill C-36.

Hon. Joyce Fairbairn: Honourable senators, the pre-study and the examination of the government's first anti-terrorist response to Bill C-36 has proven to be quite a ride for those who served on the Special Senate Committee on Bill C-36 since October 17, when it was first formed.

To be faced squarely with the brutal terrorist acts of September 11, which killed thousands of individuals in the United States, and with the contingent dangers to Canada as its friend and neighbour, across the longest undefended border in the country, was an unbelievable shock to the people of Canada, its government and its Parliament. To be presented with one of the most complex and challenging pieces of bills ever placed before our Parliament was daunting and, for some, disturbing.

Honourable senators, may I say at this late point in the debate, that the senators whom I watched and listened to, who sat around that committee table for 58 hours listening to and questioning 76 witnesses and debating the results, were simply exceptional. Together, they brought tremendous experience to most of the areas touched by the bill, including security, criminal law, constitutional law, human rights, international relations, communications and, of course, political life.

Some also brought the perspectives of groups and organizations from across the country who believe they will be particularly affected by this legislation. I want to thank Senator Jaffer and Senator Andreychuk for their insights.

I served as the chair in partnership with our terrific deputy chair, Senator Kelleher. Our job was to manage an intense, complicated and sometimes very emotional assignment with a view to ensuring that we had a representative variety of witnesses, and that they and the committee itself had the time to exchange questions and answers. Now, that is not easy to accomplish when there is an element of urgency. I thank Senator Kelleher, our staff, the researchers at the Library of Parliament and Ms Heather Lank, our phenomenal Clerk of the Committee, for all their time and extra effort.

From all the testimony and legalese, one fact remained constant: Terrorism is real, it is with us now with its potential risk, both outside and inside our borders, and it will not go away. In fact, in one guise or another, it has been an integral part of history, often culminating in war, as the people in Afghanistan know today.

It is also enormously troubling, and Senator Furey touched on this yesterday, that there were various reports indicating advance signals were available that something was about to happen in the United States. However, no one in the security and intelligence establishment got a handle on that. That speaks to a long-standing concern of mine that Canadians and their allies have not been intense enough in their concern or cooperation about this kind of potential disruption, particularly on Canadian soil.

To a degree, we seem to have let down our guard. Perhaps we have been aware of our danger, but we have not been adequately

prepared with the response, perhaps because of the euphoria that accompanied the end of the Cold War and the destruction of the Berlin Wall. Whatever the reason, resources have not met the need.

That leads me into what I consider to be the heart of Bill C-36. It is not only an attempt to maintain and strengthen a system that will punish those who have committed dreadful crimes and atrocities, but it is also an effort to do something infinitely more difficult: It will establish, through law, a regime that will prevent those who would commit acts of terrorism from doing so; it will prevent planes from taking off on suicide missions to destroy buildings or sensitive facilities; it will thwart destruction by bombs in places of work and of worship; and it will cut off, at the source, the collection and transfer of the resources destined to fund these and other acts of violence that wreak havoc with individual lives.

Most particularly, all of this must be done while, as so many senators have said, balancing the protection of the rights and freedoms that we take for granted. Those rights and freedoms make Canada the envy of others from every corner of the world and they encourage people to come to Canada to add to the soul and the future strength of Canada. We want those people to come here. We want our doors to remain open. We want our citizens and their families to be safe, but we also want to be able to send out a message backed by the heft of law, security and political will that Canada will not tolerate the actions of those who knowingly and willingly facilitate the commitment of terrorist acts.

• (1520)

We must, to the very best of our ability and our actions, send the message that Canada is not a viable haven for terrorist hopefuls, nor is Canada a training ground or stopping-off point for those who would wish to damage and destabilize our neighbour, the United States of America. The tools for this job are contained, in part, in Bill C-36.

Was I comfortable with the original version of this bill? No, I was not, any more than I was comfortable with the context in which the production of such a bill was forced. That was why I was part of our committee's consensus to recommend changes to this bill in the pre-study report we were asked to prepare by the government. In 22 recommendations, we made a strong pitch for the government to consider. This was even before the House of Commons Justice and Human Rights Committee had begun its work.

Honourable senators, make no mistake: The special committee's recommendations were considered seriously by the Attorney General and by the government and were critical to the changes that were subsequently made. Of our suggestions, eight were accepted, and four of them were partially accepted. Several new changes were introduced which were directed at the causes of our concern; and the others were either not addressed or rejected in the other place. The bill that came back to us was, in essence, a different bill, and I believe it was better.

In spite of fears honestly and sometimes passionately expressed, this bill itself does not remove fundamental rights and freedoms. The Charter of Rights and Freedoms has not been undermined or negated. The notwithstanding clause has not been invoked. On several occasions, the Attorney General went out of her way to state that the provisions of this bill are in conformity with the Charter.

All Canadians, including the full range of our rich multicultural society, will continue to enjoy their Charter rights. However, some of the witnesses before our committee, as we have heard senators mention over the past few days, continue to be fearful that this will not be the case if the proposed provisions in this bill are implemented. They need not only reassurance but also concrete evidence that their concerns are being taken seriously.

We worry about all the fears that were articulated by Senator Kinsella, Senator Andreychuk and others in this debate. They are pretty transparent in terms of the desire of all of us to balance security and liberty. It was for this reason that honourable senators on this side wished to attach some observations to the final report of our committee. Among those observations were suggestions to accelerate training in the area of peace and security for those who deal with individuals on the ground. We want the government to regard this as a priority. We were told in committee that such training is already in progress.

While appreciating the recent announcements, as well as last week's budget, of increased funding, we urge that there be no ceiling on resources if more should be required. We want those in ethnic and cultural communities with fears and particular personal experiences to be accorded a method of sharing their concerns with our police and security agencies. We also want their representatives to have a meaningful channel through which they can assist government review agencies to get behind the statistics and give Parliament and the public qualitative information on how the powers of the bill are being carried out, instead of just receiving the bare numbers of arrests, hearings and detentions.

Among our many concerns, two issues have been discussed widely here. The first was the sunset clause, which we in our pre-study recommended should be five years, covering all parts of the bill except those referring to international conventions. I agreed with that at pre-study primarily because of the concerns surrounding preventive arrests and investigative hearings. Consequently, I did not oppose the government decision to place the sunset clause on only those two elements of the bill. We want to see how these are conducted and whether they should be continued.

Honourable senators, let there be no doubt about the ability of this house to study and debate a resolution. While resolutions may not be amendable, they are able to have the full focus of debate with committee hearings and witnesses and more debate. In fact, I was the chair of one of the committees on Newfoundland resolutions. It was one of the toughest jobs I have had to do in my life.

Honourable senators, there is a process in place. At the end of that process, if there were a vote in either House against these provisions, that would automatically sink them.

I also believe the new measures in the bill to increase the elements of review and oversight through reporting will be carried out in a manner that will respect the stated intentions of government to inform the public and Parliament and to maintain the balance of protection for citizens. During our pre-study, I also supported the concept of the appointment of a parliamentary officer. The government did not, although it added other measures such as annual reports by the federal and provincial Attorneys General as well as parliamentary review. We were not particularly clear in our report as to how the officer would do the job.

Even though members on the other side have argued vigorously that the review mechanisms overseeing police and security functions, as well as the government itself, are neither sufficient nor appropriate in some cases, I believe they should be given a fair chance to operate. In the context of this bill, I do not share the view that government and security authorities cannot be trusted and that they may whitewash any evidence of abuse of the powers. I simply do not believe that, honourable senators, and I am far from naive.

I have also been persuaded, after listening to witnesses and repeatedly questioning officials, that the jurisdictional differences regarding the ability or advisability of a federal commissioner endeavouring to monitor and report on the activities of those who carry out many of the powers of this bill, which lie within provincial jurisdiction, are real and serious concerns. In our country, it is not a simple thing in our country to reach into other jurisdictions without causing repercussions that could easily undermine the whole purpose of the action.

Honourable senators, there are those in this chamber with lengthy experience and a sense of responsibility who have spoken about their skepticism of achieving openness and candour in the process of oversight as proposed in this amended bill. I humbly confess that I have observed, written about, advised and participated in our parliamentary system for almost 40 years and, by choice, have closely monitored its strengths and its weaknesses. I love the place and I respect the system.

I have been saddened over the decades to see Parliament's role diminished in the eyes of the public by pressures of the times, both executive and through communications. However, its strengths still remain. I firmly believe that the Parliament of Canada has within its own powers and responsibilities the opportunity to act as a watchdog of this critical security process.

I believe that a strong light will shine relentlessly on those who implement this bill. Mistakes and failures will not be easily hidden away. I say with as much force as I can muster and through my personal experience: Never underestimate the Senate of Canada.

• (1530)

The Hon. the Speaker: I regret to advise that the 15 minutes allotted for Senator Fairbairn's speech, comments and questions have expired.

Senator Fairbairn: As Senator Andreychuk would say, I have a couple of sentences left.

The Hon. the Speaker: Is leaving granted, honourable senators?

Hon. Senators: Agreed.

Senator Fairbairn: Honourable senators, I will conclude with a wry comment. Despite all of the criticism and ridicule that has been directed at this chamber since Confederation by those who do not know us, do not know who we are and do not understand what we do, this place in fact has a rich history of major contributions through its initiatives on issues that others refuse to tackle or neglect to address, but which have profound implications for the lives of Canadians. I look around this chamber and see senators on both sides who have carried important issues from coast to coast in Canada and have changed the lives of people and their perspectives about themselves and their futures.

This, senators, is one of those issues. I do not regard engagement of the Senate in an ongoing overview of the implementation of this legislation as just a viable option. With the Standing Senate Committee on Human Rights in mind, I believe it is our duty to seek a mechanism to exhibit the will, the fairness, the objectivity and the tenacity to ensure that this bill works for the people it is intended to protect. We can do this whenever we want. We do not have to wait for three years. It can be done by a collective agreement in this house, whatever the mechanism. The choice is ours, colleagues, and it is our responsibility.

Senator Kinsella: Honourable senators, I wish to compliment Senator Fairbairn on her excellent speech. I am very much intrigued by the recommendation she made at the end of her remarks. Would she support us seeking the unanimous consent of the house to empower the Standing Senate Committee on Human Rights to undertake the type of oversight of which she spoke?

Senator Fairbairn: Honourable senators, that is not my decision to make. That would be an extremely important issue to be discussed by the leadership on both sides of this house. I mentioned the Human Rights committee because it has been mentioned before. It may be that the house would wish to consider another mechanism or another committee, but I would support whatever the leadership of this chamber would agree to.

Hon. Marcel Prud'homme: Honourable senators, I have here a letter addressed to an honourable senator. It reads:

Thank you for your letter stating your satisfaction with the radical nature of Bill C-36. I appreciate the opportunity to address your explanation.

You say "Bill C-36 is ground breaking legislation" and "that many provisions will test the boundaries of the Charter of Rights and Freedoms." Yet you refuse to allow for needed amendments that would protect those basic Canadian civil rights.

In addition, your unwillingness to pass this legislation after Christmas begs the question of "why so fast"? Canada does not need these laws today. The widespread and serious opposition to this Bill over the last two months must have made that clear. In our view there is no need for this Act, but if you must pass it, amend it first. Protect due process by adding a comprehensive sunset clause and an independent parliamentary oversight provision.

Finally, what Canadians really deserve is to be listened to. The Minister of Justice and the PMO did not listen when it came to Bill C-36. You are a member of a Chamber of sober second thought. Please amend this Bill. The Brits did it. Otherwise, what will you be able to say in good conscience, when asked why you voted the way you did: *I was only following orders.*

That letter comes from the Ukrainian-Canadian Congress and is addressed to the Honourable Lorna Milne, Chairperson of the Standing Senate Committee on Legal and Constitutional Affairs.

Dear Senator:

Please do all you can to halt Bill C-36 (and C-35, for that matter). Others have given you no end of detailed argument. I only offer this thought: the sort of self-destructive reaction that C-36 represents is "exactly" what Osama bin Laden hoped to provoke by terror attacks.

The attacks were not only ends in themselves, but tools to deflect democracies into totalitarian reactions and internal quarrels. Does the Canadian Government truly wish to contribute so generously to the long-term success of a fanatic's plans?

That letter is from Dr. Michael Wilson, a retired professor from Saskatchewan.

Dear respected politicians and senators of Canada,

I am a Canadian. I was born in Canada. I have been here for all 25 years of my life. I speak fluent English....

I treasure the rights and freedoms that I enjoy in Canada. But the possible passing of Bill C-36 makes me nervous about my future, and the future of my family and friends.

Why? Particularly because I am Muslim. I dress in a manner that identifies me as Muslim. I wear a head scarf. When people see me, they often assume that I cannot speak English or that I have just immigrated here. I cannot relate to the violence of Sept. 11. My faith does not teach violence or terrorism. My family lives a peaceful life and we contribute as much as we can to Canadian society.

It is no secret that Muslims are being more carefully watched and racial profiling seems a reality. Am I and the thousands of people like me in Canada going to be held under suspicion now just because of our beliefs, our dress or the colour of our skin? I worry very much that Bill C-36 is going to make our lives very difficult. It will take away basic civil liberties.

I urge you all to reconsider how much damage this bill will cause....

That letter is from Winnipeg, a place to which I will travel to address this group of people.

We hear, honourable senators, that the FBI is asking for more money to come into Canada. They did not ask Canada for permission. They are asking Congress for money to do so. Although we have not said whether we will accept that, they are already asking permission to better place themselves.

Honourable senators, these letters make all of the arguments that you have heard. However, I know it is no use. I thought that when I came to the Senate we would listen to each other's arguments. I came here with strong views, but I was ready to listen to the strong views of others. When I am not knowledgeable about the issue being discussed, such as agriculture, I make a point of listening to the senator speaking.

• (1540)

I would listen to every kind of expert, and the Senate seems to have experts in abundance. That is exactly what we should do because it is in the interest of Canada to do so. However, it seems that every bill now comes with a mindset, so what is the use of debating?

What is the use? Honestly, how can we go to universities and colleges? How can His Honour continue to receive teachers, as he does so well, and invite senators to participate in discussions with them? Their first question is: What do you do in the Senate? We tell them that we modify the role of the House of Commons and that our committees scrutinize proposed legislation. What purpose is served by having all these Canadians come here, at the expense of the taxpayer — and that is the right thing to do — where they are so warmly received? What is the use of Senator Beaudoin putting months of effort into preparing amendments? What is the use of Senator Nolin and all of these Liberals working night and day, with the best staff, the best researchers, the best witnesses, if at the end of the day we say, "The fun is over; let us pass the bill"?

Honourable senators, I should like to read to you something that is related. I shall not reveal its author until the end; you may be surprised. It is from Toronto; it is dated December 17, 2001.

In a strongly worded press release...urged Ottawa to say no to U.S. demands to establish a new Federal Bureau of Investigation (FBI) detachment in Toronto as well as refusing to allow U.S. soldiers to be stationed in Canada.

"The idea of soldiers being used to control the Canada-U.S. border is repulsive enough," Mr. "X" said, "but allowing them to be stationed here is totally unacceptable. Cooperation is one thing, and we support it fully, but occupation is something else and that is our principal comfort."

"An invasion by the FBI is equally intolerable," Mr. X added. "First the government of Canada accedes to U.S. pressure to pass legislation that makes this country a police state and then considers a U.S. request to allow their police to be involved in how this Draconian legislation will be used. The answer Ottawa must give Washington is a polite but absolutely firm ...NO!"

What the United States has been doing since September 11th goes far beyond what is necessary for security purposes. It is in the process of establishing an Imperial Empire with considerations far broader than security concerns. In fact geopolitics is foremost.

"This is the reason we must say no to the FBI. Their initial concerns might be security but they would soon be involved in industrial espionage and keeping Washington posted about any Canadian activity that might be primarily in Canada's interest," Mr. X alleged. "That is one of the functions of U.S. police and CIA operations worldwide, and we have more than enough of them in Canada already."

Even before September 11th the propaganda war in favour of a common perimeter, a customs union and the adoption of the U.S. dollar, all measures designed to bring Canada more tightly into the elephant's embrace, was intensified. "Since September 11th, using the tragic events of that day as a cover, an all-out assault on our sovereignty has begun," Mr. X added.

"It is time for Ottawa to draw a line in the sand and say, ...This far and no further. No common perimeter, no customs union, no monetary union, no more FBI detachments in Canada and American troops stationed on Canadian soil.' If they don't, they might just as well run up the white flag and admit surrender."

I read that and said, "My God, who is that guy?" Then I remembered: That is the man I supported for the leadership of the Liberal Party in 1968. Mr. Paul Hellyer, whose devotion to Canada is certainly equal to anyone's here in this chamber. This man is an ex-Minister of National Defence, elected in the 1940s, minister at the tender age of 25, before 30. Here is a man who has reflected, who has time. Some people may say, "Oh, that is Paul; he is on another trip."

I have received so many e-mails and letters. I have 740 pages of material. I said to my colleagues: "If you run out of time to prepare a speech, make an extract from everything you have on your computer: Take one phrase from each of the letters that you have received."

I can tell His Honour that every city across this country, every province, every group of Canadian people, from the farmers unions to the teachers unions to civil libertarians to lawyers, will have been represented in those extracts. How can all these people be wrong? How can they be wrong?

I do not believe that Canadians at the end of the day are wrong. That is one of the reasons I will vote against this legislation.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, it is quite obvious that anything I say will not make an iota of difference in voting intentions.

Senator Taylor: Go ahead and try.

Senator Lynch-Staunton: Nonetheless, I think it is important to put on the record a number of anxieties and apprehensions about this bill that I know are shared by more than one person who will be voting in favour of it.

First, I want to join with others to commend Senator Fairbairn for the excellent way in which she chaired the committee in both instances. She did so with fairness, with patience, with understanding and with a gentle firmness, all of which made a big difference in helping the proceedings to go as smoothly as they did. I thank her again for her excellent work.

That being said, she did tell us about the committee spending 58 hours hearing for the most part many witnesses. As well, we spent hours here in debate, as did the other place. Nonetheless, we are still being asked to go into the unknown, to commit an act of faith, but, unfortunately, an act of blind faith.

I do not know of any one person in this country, including the officials in the Department of Justice and other departments who put this proposed legislation together, who can with confidence explain the exact meaning and interpretation of all of its clauses. That person just does not exist.

This bill amends 22 acts. This bill in many cases is worded in such a way that certain clauses can lend themselves to contradictory interpretations. On more than one occasion before the committee, when asked to comment on various contentious or controversial clauses, the minister and/or her officials had to say: "Yes, in so many words, you could give that interpretation to them, but that is not our intention."

That is the kind of blind faith we are being asked to commit. Certain interpretations that the department give as reassurance may not be maintained as this bill remains on our statute books for who knows how long and other become responsible for its application.

In saying that, let me refer to the War Measures Act, which rightfully has a place in this debate. That act was meant only to be used for the crisis caused by World War I. It stayed on our

books for nearly 75 years. As has been recalled more than once here, in 1970, under a regulation arising from the War Measures Act, as it was proclaimed in October, nearly 500 Canadians were arrested in peacetime on suspicion of belonging to an unlawful organization.

The War Measures Act was never enacted to be used in peacetime. Never. In examining the reaction of those who were there at the time, Mr. Trudeau, years later, was known to say that he was appalled at the number of arrests that were made. Never, ever did he expect that that would be the outcome of invoking the act. Mr. Turner, who was Minister of Justice at the time, was against the enactment, but lost in cabinet. I believe it was Mr. Jamieson who, in his memoirs, wrote that some of the arguments brought in favour of enacting the War Measures Act, such as a claim that the FLQ had caches of arms and dynamite, were false. The cabinet had been given erroneous information.

• (1550)

Honourable senators, I am not pointing the finger at any particular authority on this. Whether the authority was municipal, provincial or federal is irrelevant. The point is that decisions were taken at a time of crisis without proper information and for the wrong reasons. In Bill C-36, judges can accept hearsay evidence. That is unheard of in our court system. Under this bill, however, hearsay evidence in certain cases is eligible to be presented in court to support a charge against an individual. "It is unheard of, but do not worry," we are told, "it will be used with discretion in only unique cases."

We are told that the bill, thanks to the amendments, contains some built-in oversight provisions such as judicial review and various existing agencies will be called on to ensure that the clauses we have been particularly concerned about are applied in the way the government intended. We have been told that one of those agencies will be the RCMP Complaints Commission. As I understand it, honourable senators, the RCMP Complaints Commission waits until complaints are lodged. It has no oversight function. Some of the other agencies mentioned have more or less that same limited responsibility.

The Human Rights Commission was mentioned. The Human Rights Commission only hears complaints. It has nothing to do with the oversight of any legislation. As I understand it, it hears complaints of discrimination.

There was also mention of judicial review. Yes, there is an element of judicial review, which is reassuring, but much of the judicial review is after the fact. One example of that in the original bill was where an item was called "the list of terrorists." That expression was found to be somewhat excessive. The government found the objection to be valid; therefore, it will be called "the list of entities." However, the definition of entity is "any group or individual who is suspected of engaging in terrorist activity," so it is a cosmetic change.

More important, without warning, without public evidence, without going to court to prove his assertion, the Solicitor General can put any entity on that list. An individual so listed who has reason to feel that he has been wrongly listed has only one recourse, and that is to go to the Solicitor General and ask to be taken off. The person who puts the name on is the same person to whom one would go to ask to be taken off. The Solicitor General, within 60 days, will agree or not, without showing any evidence of why that person was put on the list in the first place. Only then does the judiciary come into play. The listed individual, having lost his appeal to the Solicitor General, who has no obligation to give any reason for that person being on the list, by that time has had his assets seized, his bank accounts frozen, has become a non-person, his reputation sullied, is then allowed to go to court. If he loses his case, or the government loses the case, then there is the right to an appeal. That is not judicial review. That is not protection of the innocent.

There was a case in the United States brought to my attention by Senator Tkachuk, where the United States and European authorities had drawn up a secret collective list of suspected terrorists. Finland put that list on their Web site by mistake, and it was on that Web site long enough for the names to become public. One of the individuals named on the list had been arrested in Florida because he happened to room with one of the individuals who was on one of the planes on September 11. This person was an innocent German, who happened to be a roommate of the terrorist, and a student. He was on the list, he was arrested, harassed, investigated, and his assets were frozen. His reputation was ruined. The police, realizing they had made a mistake, apologized, and that is all he got as satisfaction. This bill, as written, can allow such a thing to happen because the innocent have no protection under the proposed provisions of the bill. That is just one example, and I could cite others.

Finally, Senator Fairbairn has reminded us that, in the comments of the majority in the final report of the committee, an appeal was made to the government that those who are called on to administer the act and to apply it have enough resources and training at their command. That leads one to conclude that they do not have enough resources or training at their command at present because this will be an act that will not only be the responsibility of the RCMP, but every province will be involved, every Attorney General will be involved, every police force in Canada will be involved, or has the possibility of being involved, provincially, municipally and rurally. How will all of those people be trained to understand the huge powers that this bill will give them and to use them in the way intended?

Honourable senators, they do not have that training now. They may be getting the resources, but they certainly do not have the ability to exercise, in a proper way, what we are being asked to give them, the same way as in 1970 the police authorities had absolutely no training and no understanding of what the enactment of the War Measures Act meant in peacetime. They were told by someone in authority, "Here is a list."

Senator Prud'homme: Even people in Gastown in Vancouver.

Senator Lynch-Staunton: They were told: "Here is a list. Go and knock on the door and arrest them in the middle of the night. You can detain them for up to 21 days." I believe, of the 480 or so people who were arrested, only 18 were eventually found guilty, and not all of them under the War Measures Act. The solution to the FLQ crisis in terms of finding out who were the kidnappers, the murderers and who were members of the main cells, had nothing to do with the War Measures Act. It was all police work, as it is in enforcing the Criminal Code, the Emergencies Act, and other acts. All the tools are there. The ones that are missing are in C-36 and are the ones that can be used to excess, and that is why I will vote against this bill.

Senator Kinsella: Honourable senators, I should like to ask a question of my honourable colleague. I wish to follow up on the suggestion that was made by Senator Fairbairn that the Standing Senate Committee on Human Rights be given a mandate forthwith to carry on the parliamentary review that we all seem to agree is so important. Would the Leader of the Opposition express his concurrence with that idea?

Senator Lynch-Staunton: If the Honourable Senator Kinsella is given leave to make such a motion I will be happy to second it, and we can resolve the matter right now, before we adjourn for the Christmas break.

Hon. Sharon Carstairs (Leader of the Government): Question!

Senator Kinsella: Honourable senators, I would request leave of the Senate to bring forward a motion to the effect that the Standing Senate Committee on Human Rights be given the mandate to carry out the parliamentary oversight that was envisaged and underscored by Senator Carstairs and Senator Fairbairn.

The Hon. the Speaker: Is leave granted, honourable senators?

Some Hon. Senators: No.

The Hon. the Speaker: Leave is not granted.

Is the house ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: I will then proceed to put the questions on Bill C-36. I will do them in the reverse order.

Is there agreement that the bells should sound and with regard to a time for the vote?

Hon. Bill Rompkey: I believe there is agreement on a 15-minute bell.

The Hon. the Speaker: It is now precisely four o'clock. Honourable senators, is it agreed that votes will take place at 4:15 p.m., with a 15-minute bell starting now?

Hon. Senators: Agreed.

• (1620)

The Hon. the Speaker: Call in the senators.

Motion in amendment of Senator Beaudoin negated on the following division:

• (1610)

Motion in amendment of Senator Andreychuk negated on the following division:

YEAS
THE HONOURABLE SENATORS

YEAS THE HONOURABLE SENATORS	
Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Di Nino	Nolin
Doody	Oliver
Eyton	Pitfield
Forrestall	Prud'homme
Johnson	Rivest
Kelleher	Spivak
Keon	Stratton
Kinsella	Tkachuk—24

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Di Nino	Nolin
Doody	Oliver
Eyton	Pitfield
Forrestall	Prud'homme
Johnson	Rivest
Kelleher	Spivak
Keon	Stratton
Kinsella	Tkachuk—24

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Maheu
Cook	Mahovlich
Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finestone	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Wiebe—45
Hubley	

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
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Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finestone	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Wiebe—45
Hubley	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, we will now vote on the motion in amendment of the Honourable Senator Murray.

• (1630)

The Hon. The Speaker: We now move to the vote on the third reading of Bill C-36.

Motion in amendment of Senator Murray negatived on the following division:

Motion agreed to and bill read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Di Nino	Nolin
Doody	Oliver
Eyton	Pitfield
Forrestall	Prud'homme
Grafstein	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—25
Kinsella	

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Maheu
Christensen	Mahovlich
Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finestone	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Graham	Taylor
Hervieux-Payette	Tunney
Hubley	Wiebe—42

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

YEAS
THE HONOURABLE SENATORS

Austin	Hubley
Bacon	Jaffer
Banks	Joyal
Biron	Kenny
Bolduc	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Maheu
Christensen	Mahovlich
Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Eyton	Poy
Fairbairn	Robichaud
Ferretti Barth	Rompkey
Finestone	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gauthier	Taylor
Grafstein	Tunney
Graham	Wiebe—45
Hervieux-Payette	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Lynch-Staunton
Atkins	Meighen
Beaudoin	Murray
Di Nino	Nolin
Doody	Oliver
Forrestall	Prud'homme
Johnson	Rivest
Kelleher	Spivak
Keon	Stratton
Kinsella	Tkachuk—21
LeBreton	

ABSTENTIONS
THE HONOURABLE SENATORS

Pitfield—1

[Translation]

ROYAL ASSENT

NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

December 18, 2001

Mr. Speaker.

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, will proceed to the Senate Chamber today, the 18th day of December, 2001, at 4:45 p.m., for the purpose of giving Royal Assent to certain bills of law.

Yours sincerely,

Barbara Uteck
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like all items on the Order Paper to be deferred until the next sitting of the Senate, retaining their respective places, with the exception of the Notices of Government Motions, as agreed to earlier today.

[English]

The Hon. the Speaker: Is that agreed, honourable senators?

Hon. Senators: Agreed.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, yesterday I indicated that I would be speaking today to the motion by Senator De Bané on the situation in the Middle East. I see that those of us on this side have more class than some on the other, perhaps, but I am going to accept the motion by Senator Robichaud. However, I do not want to be faulted for not speaking to Senator De Bané's motion as I had said I would yesterday. I wanted to do so today, but I am prepared to bow to the request from the government side.

[English]

The Hon. the Speaker: As Senator Prud'homme is not withholding consent, is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[Translation]

ADJOURNMENT

Leave having been given to revert to Notices of Government Motions:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, February 5, 2002, at 2 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned during pleasure.

• (1700)

ROYAL ASSENT

Her Excellency the Right Honourable Adrienne Clarkson, Governor General of Canada, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Acting Speaker, Her Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica (*Bill C-32, Chapter 28, 2001*).

An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts (*Bill C-34, Chapter 29, 2001*).

An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (*Bill S-31, Chapter 30, 2001*).

An Act to amend the Carriage by Air Act (*Bill S-33, Chapter 31, 2001*).

An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts (*Bill C-24, Chapter 32, 2001*).

An Act to amend the Export Development Act and to make consequential amendments to other Acts (*Bill C-31, Chapter 33, 2001*).

An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect (*Bill C-40, Chapter 34, 2001*).

An Act to amend the Air Canada Public Participation Act (*Bill C-38, Chapter 35, 2001*).

An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (*Bill S-10, Chapter 36, 2001*).

An Act to amend the Criminal Code (alcohol ignition interlock device programs) (*Bill C-46, Chapter 37, 2001*).

An Act to amend the Aeronautics Act (*Bill C-44, Chapter 38, 2001*).

An Act to amend the International Boundary Waters Treaty Act (*Bill C-6, Chapter 40, 2001*).

An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism (*Bill C-36, Chapter 41, 2001*).

The Honourable Bob Kilger, Deputy Speaker of the House of Commons, then addressed Her Excellency the Governor General as follows:

May it please Your Honour.

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Honour the following bill:

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002 (*Bill C-45, Chapter 39, 2001*)

To which bill I humbly request Your Honour's assent.

Her Excellency the Governor General was pleased to give the Royal Assent to the said bill.

The House of Commons withdrew.

Her Excellency the Governor General was pleased to retire.

The sitting of the Senate was resumed.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, before proposing the adjournment, I want to thank my colleagues opposite for their tremendous cooperation, which greatly facilitated our work.

I also want to thank those who, directly or indirectly, also facilitated our work through their dedication, whether they work on the floor of the chamber, in administrative offices or in senators' offices. Merry Christmas to all.

[English]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to associate our side with the words of the Deputy Leader of the Government.

On behalf of my colleagues on this side and in my own name, I wish to extend to colleagues opposite every joy during the season of peace.

During the year 2002, we look forward to the Senate of Canada continuing the important work that it has undertaken.

To you and to your staff, honourable senators, and to all of those who assist us in making our work possible, we wish you the best of the season and all blessings in the year 2002.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I concur in the tribute paid to our whole staff.

[English]

I also wish the Honourable Senator Carstairs the best. I learned something from Orville Phillips, who said, "We can fight like hell here, Marcel" — and he was here for 35 years — "but remember that when you pass through these doors, we are friends and we can talk to each other."

Merry Christmas. For those who are not of the Christian faith, happy New Year.

[Translation]

The Senate adjourned until Tuesday, February 5, 2002, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(1st Session, 37th Parliament)
Tuesday, December 18, 2001

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10	01/06/14	13/01
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29 + 1 at 3rd	0	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02 Senate agreed to Commons amendments 01/06/12	01/06/14	14/01
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04	01/06/14	12/01
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01	01/06/14	10/01
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11 + 2 at 3rd 01/06/06	01/06/07	01/10/25	25/01
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15	01/06/14	8/01
S-31	An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	01/09/19	01/10/17	Banking, Trade and Commerce	01/10/25	0	01/11/01	01/12/18	30/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-33	An Act to amend the Carriage by Air Act	01/09/25	01/10/16	Transport and Communications	01/11/06	0	01/11/06	01/12/18	31/01
S-34	An Act respecting royal assent to bills passed by the Houses of Parliament	01/10/02	01/10/04	Rules, Procedures and the Rights of Parliament					

**GOVERNMENT BILLS
(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources	01/06/06	0	01/06/12	01/06/14	18/01
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources	01/06/06	0	01/06/14	01/06/14	23/01
C-6	An Act to amend the International Boundary Waters Treaty Act	01/10/03	01/11/20	Foreign Affairs	01/12/12	0	01/12/18	01/12/18	40/01
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30	01/09/25	Legal and Constitutional Affairs	01/11/08 negotiated 01/12/10	11 1 at 3rd 01/12/13	01/12/18		
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	01/06/06	01/06/14	9/01
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs	01/06/07	0	01/06/13	01/06/14	21/01
C-10	An Act respecting the national marine conservation areas of Canada	01/11/28							
C-11	An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger	01/06/14	01/09/27	Social Affairs, Science and Technology	01/10/23	0	01/10/31	01/11/01	27/01
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29	01/06/14	7/01
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	15/01
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications	01/10/18	0	01/10/31	01/11/01	26/01
C-15A	An Act to amend the Criminal Code and to amend other Acts	01/10/23	01/11/06	Legal and Constitutional Affairs					
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance	01/06/07	0	01/06/11	01/06/14	11/01
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance	01/06/12	0	01/06/12	01/06/14	19/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	17/01
C-23	An Act to amend the Competition Act and the Competition Tribunal Act	01/12/11							
C-24	An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts	01/06/14	01/09/26	Legal and Constitutional Affairs	01/12/04	0 + 1 at 3rd	01/12/05	01/12/18	32/01
C-25	An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts	01/06/12	01/06/12	Agriculture and Forestry	01/06/13	0	01/06/14	01/06/14	22/01
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	16/01
C-28	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	01/06/11	01/06/12	—	—	—	01/06/13	01/06/14	20/01
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/06/13	01/06/14	—	—	—	01/06/14	01/06/14	24/01
C-31	An Act to amend the Export Development Act and to make consequential amendments to other Acts	01/10/30	01/11/20	Banking, Trade and Commerce	01/11/27	0	01/12/06	01/12/18	33/01
C-32	An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica	01/10/30	01/11/07	Foreign Affairs	01/11/21	0	01/11/22	01/12/18	28/01
C-33	An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts	01/11/06 (withdrawn 01/11/21)	01/11/27	Energy, the Environment and Natural Resources					
		01/11/22 (reintroduced)							
C-34	An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts	01/10/30	01/11/06	Transport and Communications	01/11/27	0	01/11/28	01/12/18	29/01
C-35	An Act to amend the Foreign Missions and International Organizations Act	01/12/05	01/12/14	Foreign Affairs					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-36	An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism	01/11/29	01/11/29	Special Committee on Bill C-36	01/12/10	0	01/12/18	01/12/18	41/01
C-37	An Act to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act	01/12/04	01/12/17	Aboriginal Peoples					
C-38	An Act to amend the Air Canada Public Participation Act	01/11/20	01/11/28	Transport and Communications	01/12/06	0	01/12/11	01/12/18	35/01
C-39	An Act to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts	01/12/04	01/12/12	Energy, the Environment and Natural Resources					
C-40	An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed, or otherwise ceased to have effect	01/11/06	01/11/20	Legal and Constitutional Affairs	01/12/06	0	01/12/10	01/12/18	34/01
C-41	An Act to amend the Canadian Commercial Corporation Act	01/12/06	01/12/14	Banking, Trade and Commerce					
C-44	An Act to amend the Aeronautics Act	01/12/06	01/12/10	Transport and Communications	01/12/13	0	01/12/14	01/12/18	38/01
C-45	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/12/05	01/12/17	—	—	—	01/12/18	01/12/18	39/01
C-46	An Act to amend the Criminal Code (alcohol ignition interlock device programs)	01/12/10	01/12/12	Committee of the Whole	01/12/12	0	01/12/13	01/12/18	37/01

COMMONS PUBLIC BILLS

[illegible]

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5	referred back to Committee 01/10/23		
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications	01/06/05	0	01/06/07		
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Rules, Procedures and the Rights of Parliament					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08 Senate agreed to Commons amendment 01/12/12	01/12/18	36/01
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology	01/12/14	0			
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Rules, Procedures and the Rights of Parliament (Committee discharged from consideration—Bill withdrawn 01/10/02)					
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01		
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15	Bill withdrawn pursuant to Commons Speaker's Ruling 01/06/12	
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn) 01/05/10 Energy, the Environment and Natural Resources	01/11/27	0			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		(Subject-matter 01/04/26 Social Affairs, Science and Technology)	(01/12/14)				
S-22	An Act to provide for the recognition of the Canadian Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21	01/06/11	Agriculture and Forestry	01/10/31	4	01/11/08		
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02	01/06/05	Transport and Communications					
S-29	An Act to amend the Broadcasting Act (review of decisions) (Sen. Gauthier)	01/06/11	01/10/31	Transport and Communications					
S-30	An Act to amend the Canada Corporations Act (corporations sole) (Sen. Atkins)	01/06/12	01/11/08	Banking, Trade and Commerce					
S-32	An Act to amend the Official Languages Act (fostering of English and French) (Sen. Gauthier)	01/09/19	01/11/20	Legal and Constitutional Affairs					
S-35	An Act to honour Louis Riel and the Metis People (Sen. Chailfoux)	01/12/04							
S-36	An Act respecting Canadian citizenship (Sen. Kinsella)	01/12/04							
S-37	An Act respecting a National Acadian Day (Sen. Comeau)	01/12/13							

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02	01/06/14	
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	
S-28	An Act to authorize Certain Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	

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